



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Zornes Investments Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Landlord applied on September 25, 2013 for:

1. A Monetary Order for damage to the unit – Section 67;
2. An Order to retain the security deposit – Section 38;
3. A Monetary Order for compensation – Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on October 15, 2013 for:

1. An order for the return of the security deposit – Section 38;
2. An Order to recover the filing fee for this application - Section 72; and
3. Other.

The Tenant and Landlord’s Agents were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Preliminary Matter

During the Hearing, it was noted that no full copy of the tenancy agreement was filed. The Parties agreed on the content of the tenancy agreement and the content of the addendums but were unclear on the exact dates of the fixed terms. As a result, the Landlord was given the opportunity to provide a late copy of the full agreement. Any additional materials sent late by the Landlord will not be considered.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The first tenancy started on June 1, 2013 for a fixed term to August 31, 2013 and a second tenancy started August 1, 2013 for a fixed term ending October 31, 2013. The tenancy ended on September 15, 2013. Rent of \$775.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$387.50 as a security deposit and \$300.00 as a pet deposit. The Parties mutually conducted a move-in inspection. The Tenant provided its forwarding address in writing on September 11, 2013.

The Tenant states that the Landlord has not returned the security and pet deposit and claims return of double the deposits. The Landlord states that they filed the application within 15 days of receipt of the forwarding address.

The Landlord states that although the Tenant was offered two opportunities to conduct a move-out inspection, the Tenant failed to attend the first scheduled inspection and refused their offer to schedule a second inspection. The Tenant states that he was a late for the first scheduled inspection and upon speaking with the Landlord at this time the Landlord refused to conduct the inspection then and that the date offered was not convenient for the Tenant so the Tenant refused the inspection. The Landlord conducted the inspection and provided a copy of the report with the evidence package served for this hearing.

The Landlord states that the Tenant left the blinds damaged and claims \$344.69 for the cost to replace the blinds. The Landlord states that the aluminum blinds were

approximately two years old. The Tenant states that the blinds were only bent from reasonable wear and tear, were still functional and did not require replacement.

The Landlord states that the Tenant damaged the floor under the fridge and that the entire flooring required replacement as the owner did not want to patch the damaged area. The Landlord states that the Tenant also pulled the socket out from behind the stove. The Landlord states that the fridge and stove had both been pulled out during the move-in inspection and no damages were present then. The Landlord claims \$866.25. The Tenant states that the appliances were not pulled out during the move-out inspection and that the damage under the fridge was present when the Tenant cleaned the unit shortly after moving into the unit. The Tenant states that at that time there were other miscellaneous pieces under the fridge as well. The Tenant states that the photo of the socket shows dust and that the Tenant did not ever pull the stove out as a new refurbished stove had been installed just before his tenancy started.

The Landlord states that the tenancy agreement includes an addendum that provides that a fee of \$225.00 will be charged to the Tenant if the three month lease is broken either by the tenant or as a result of a breach of the Act. The Landlord states that the Tenant breached a crime free addendum by having been charged for a criminal activity. The Landlord states that the Tenant was served a notice to end tenancy for cause due to this charge with an effective date of September 30, 2013. The Tenant states that while he did not dispute the end of the tenancy he disputed the reasons. The Tenant states that he did not make an application to dispute the notice to end tenancy, and that while there have been charges, the investigation is still happening, he has not been convicted of anything and he is not guilty of any crime. The Tenant states further that nothing happened in relation to the charges while he was a Tenant in the unit.

### Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution

claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the date of the Landlord's application, I find that the Landlord made the application within the time frame required and as a result I find that the Tenant has not established an entitlement to return of double the security and pet deposit.

Section 38 of the Act provides that the right of a tenant to return of a security deposit is extinguished if the Landlord offers two opportunities for inspection and the tenant does not participate. Based on the undisputed evidence that two opportunities were provided to the Tenant and the Tenant refused to attend the move-out inspection, I find that the Tenant's right to the return of the security deposit is extinguished and that the Landlord is entitled to retain the combined pet and security deposit plus zero interest of **\$687.50**.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

As the tenancy break fee applies only to the situation where the Tenant ends the fixed term or where the Tenant breaches the Act, considering Landlord's evidence was that the tenancy was ended by the Landlord for a breach of the crime free addendum and not the Act, I find that the Landlord has not substantiated that the Tenant either ended the tenancy or breached the Act. As such I dismiss the claim for the break fee.

As the Act does not provide for entitlements beyond damages and the filing fee and as photo costs are related to the provision of evidence and not damages, I dismiss each Parties claim for costs of photos. As the Tenant's claims have been unsuccessful, I decline to award recovery of the filing fee.

Section 37 of the Act provides that at the end of a tenancy a tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. Given the photos of the bent blinds but accepting that they were still usable, I find that the Landlord has only substantiated a nominal entitlement of **\$100.00** for a reduction in the value of the blinds.

As the Landlord has made a claim for the cost to repair the entire flooring and has only provided evidence of damage to one discreet area under the fridge, I find that the Landlord has not substantiated the amount claimed and I dismiss the claim in relation to the flooring. Given the photos of the stove socket, noting the dust accumulation depicted in the photos, and accepting the Tenant's evidence that the stove was not moved either at move-in or during the tenancy, I find that the Landlord has not proven that the Tenant damaged the socket and I dismiss this claim.

As the Landlord's claims, which exceeded the monetary amount claimed on the application, have met with limited success, I decline to award recovery of its filing fee. As the Landlord has been found entitled to retain the security deposit and as this amount exceeds the entitlement obtained for damages claimed, I find that the Landlord's entitlement to a monetary award for damages has been fully satisfied.

### Conclusion

I Order the Landlord to retain the security deposit plus interest of \$687.50 in full satisfaction of the claim.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 08, 2013

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Residential Tenancy Branch

