



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Downtown Suites Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. Landlord AC (the landlord) confirmed that the landlord received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on September 27, 2013. I am satisfied that the tenants sent their hearing package to the landlord in accordance with the *Act*. The female tenant (the tenant) said that the tenants received the landlord's written evidence package. I am also satisfied that the landlord sent the tenants a copy of the landlord's written evidence package to the tenants in accordance with the *Act*. The tenants submitted no written evidence.

The tenants applied for a monetary award of \$840.00, which was to include their filing fee. The tenant testified that the tenants accepted the landlord's claim of \$285.00 for a broken closet door which occurred during the course of this tenancy. The tenant testified that the tenants were seeking a return of the difference between the retained portion of their security deposit, \$705.00 ( $\$725.00 - \$20.00 = \$705.00$ ), plus their \$50.00 filing fee, less the \$285.00 for the broken closet door. This reduced the amount of the tenants' requested monetary award from \$840.00 to \$470.00 ( $\$705.00 + \$50.00 - \$285.00 = \$470.00$ ). Based on this information, the tenants have not asked for a monetary award for losses or damages arising out of this tenancy, but have requested a return of a portion of their security deposit.

Issues(s) to be Decided

Are the tenants entitled to obtain a return of any portion of their security deposit? Are the tenants entitled to recover the filing fee for their application from the landlord?

Background and Evidence

This tenancy began as a one-year fixed term tenancy on October 1, 2010. When the initial term ended, the tenancy continued as a periodic tenancy. Monthly rent was initially \$1,450.00, but increased to \$1,485.00 by the time the tenants vacated the rental unit on August 30, 2013. Although the tenants paid a pet damage deposit, the landlord returned this deposit during this tenancy. The tenants paid a \$725.00 security deposit on September 14, 2010. The tenant did not dispute the landlord's testimony that the landlord returned \$20.00 from the tenants' security deposit on September 11, 2013.

The tenant confirmed that she participated in a September 30, 2010 joint move-in condition inspection when the tenants took occupancy of the rental unit. The tenant testified that her husband attended the August 30, 2013 joint move-out condition inspection. The landlord entered into written evidence copies of the joint move-in and move-out condition inspection reports.

The tenant testified that she and the landlord's representative at the joint move-in condition inspection (Landlord LT) overlooked noting the damage to the countertop in the bathroom of this rental unit at the joint move-in condition inspection. She testified that a circular mark on the countertop and another mark in the bathtub of the rental unit were damaged when the tenancy began. She said that it was apparent that the owner of the rental unit had attempted, somewhat unsuccessfully, to repair both marks. She noted other items in the joint move-in condition inspection report which had also been damaged at the beginning of this tenancy, but were not recorded as damaged at the start of this tenancy.

Although she was not present at the joint move-out condition inspection, she testified that her husband told her that he could not recall there being reference to the broken countertop in Section Z of the joint move-out condition inspection report. This section noted that the tenant (SP) agreed that the report represented the condition of the rental unit at the end of this tenancy. Landlord CB testified that she wrote notes on this section of the joint move-out condition inspection report, which was initialled at two separate locations by Tenant SP. These notes included references to Tenant SP's agreement that the "tenant has approved to repair/replace closet bedroom door as there is a hole for \$285.00." There is also an initialled notation that the countertop may have to be repaired or replaced and that there may be bylaw fines and strata fees outstanding, which would also become the tenants' responsibility.

The landlord testified that the joint move-in and move-out condition inspection reports were very clear as to what was and was not damaged. She correctly noted that there was no reference in the signed move-in condition inspection report to damage to the countertop in the bathroom, but there was a note regarding a “burn mark on countertop” on the move-out report. The landlord testified that the replacement cost of a closet door was known to Landlord CB when she participated in the joint move-out condition inspection. The landlord and Landlord CB testified that at the time of the joint move-out condition inspection it was unclear as to whether the bathroom countertop could be repaired or if it would need to be replaced. Landlord CB also said that she would need to speak with the owner of the strata unit to find out the owner’s wishes. The landlord testified that an estimate for the replacement of the countertop was obtained later in the day on August 30, 2013. The landlord entered this \$420.00 quote into written evidence. She said that the actual cost, including labour and materials was \$517.00. She provided a copy of the invoice for the actual replacement of the countertop. She also entered written evidence regarding confirmation that the countertop could not be repaired. She said that the landlord could not find any better price to conduct this work than the \$517.00 spent on the replacement of the countertop. She said that the landlord was not interested in obtaining any further payments from the tenants, but did not wish to return anything further from the tenants’ security deposit.

Both the landlord and Landlord LT who represented the landlord at the joint move-in condition observed that there were a number of items identified in the joint move-in condition inspection report as requiring repair at the beginning of this tenancy. One of these items was the bathroom mirror which needed securing. Landlord LT testified that she and the female tenant carefully inspected the bathroom noting existing damage to the mirror and chipped tiles. She said that given this level of scrutiny taken to note this damage, it was very doubtful that both the tenant and Landlord LT would have missed existing damage to the countertop in the bathroom.

### Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant’s forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant’s security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant’s provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security

deposit if “at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.”

In this case, the landlord claimed that one of the tenants, Tenant SP, signed and initialled a section of the joint move-out condition inspection report in which he agreed in writing to allow the landlord to retain funds from the tenants’ security deposit to pay for damage for which the tenants were responsible.

There is no dispute between the parties as to the tenants’ responsibility for the \$285.00 replacement cost of the closet door damaged during this tenancy. In this regard, Landlord CB clearly identified this amount as owing in the joint move-out condition inspection report signed and initialled by Tenant SP.

In dispute is whether the portions of the joint move-out condition inspection report referring to the repair or replacement of the bathroom countertop were included in this portion of the joint move-out condition inspection report initialled by Tenant SP. Landlord CB gave direct sworn testimony that she filled this portion of the condition inspection report out at the time of the inspection and had Tenant SP initial this section to confirm his agreement to responsibility for the repair or replacement of the bathroom countertop. By contrast, the tenant gave second-hand testimony that her husband told her that he could not recall this section of the joint move-out condition inspection report including any reference to the repair or replacement of the bathroom countertop. The tenant testified that she and her husband believed that this portion of the report was added after her husband signed and initialled the report.

Under such circumstances, I find that the best evidence is the written evidence and the direct sworn testimony of Landlord CB who was at the move-out condition inspection and completed this section of the joint move-out condition inspection report. I heard no direct sworn testimony from Tenant SP, the tenants’ representative at the joint move-out condition inspection of August 30, 2013. The tenants did not supply any written statement from Tenant SP. I find that the landlord’s prompt efforts at obtaining an estimate for the replacement of the countertop on the same day as the move-out condition inspection lends support to the landlord’s account of what happened with respect to the withholding of funds from the tenants’ security deposit. After carefully reviewing the positioning of the wording in Section Z of the joint move-out condition inspection report, I find little possibility that the landlord could have entered additional notations after Tenant SP had initialled his agreement to assume only the costs of the broken closet door and the bylaw fines/strata fees.

On a balance of probabilities, I find that Tenant SP did in fact give the landlord written authorization pursuant to section 38(4)(a) of the *Act* to withhold fees from the tenants' security deposit for repairs to the broken closet door and for the repair or replacement of the bathroom countertop. It would be advisable to have a stated amount in place when a landlord obtains agreement from a tenant to withhold a portion of a security deposit for damage at the end of a tenancy. This was possible for the replacement of the closet door. However, this may not always be possible when estimates need to be obtained, as was the case in this situation, and when clarification as to the process for repairing or replacing a damaged item is necessary.

Even if I were not satisfied that the landlord obtained written authorization from one of the tenants to withhold funds from the tenants' security deposit, I find that there is sufficient evidence to demonstrate the landlord's entitlement to a monetary award for damage in excess of the retained \$705.00 amount of the tenants' security deposit. When disputes arise as to the condition of a rental unit before and after a tenancy, the best evidence is the written record of the inspection reports. I give little weight to the tenant's claim that the joint move-in condition inspection report that she signed as being accurate was not in fact accurate. In this regard, I find merit in Landlord LT's observation that there were a number of specific deficiencies in the condition of the bathroom identified by both parties in their joint move-in inspection of the bathroom. If the countertop was indeed damaged at the beginning of this tenancy, the tenant should have taken care to note this on the joint move-in condition inspection she signed. Although the landlord has chosen to not pursue a separate claim for damage over and above what has been retained from the security deposit, the landlord has demonstrated losses of \$285.00 for replacement of the closet door and \$517.00 for the replacement of the bathroom countertop, totalling \$802.00.

For the above reasons, I dismiss the tenants' application without leave to reapply. I allow the landlord to retain the remaining portion of the tenants' security deposit. As the tenants have been unsuccessful in their application, they bear the cost of their filing fee.

### Conclusion

I dismiss the tenants' application for dispute resolution without leave to reapply. I order the landlord to retain the remaining \$705.00 portion of the tenants' security deposit.

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 07, 2013

---

Residential Tenancy Branch

