



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for damage and cleaning of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Landlord had limited facility speaking English. She stated she was told by the Branch to get a translator for the hearing to assist her. She testified she could not afford a translator. I explained to the Landlord she might consider using a friend or someone as an advocate to assist her in future hearings.

The Landlord had to be cautioned several times for inappropriate behavior during the hearing. The Landlord was interruptive and was cautioned several times not to interrupt the Tenants or the Arbitrator when they were talking. After I explained my decision at the end of the hearing the Landlord became argumentative, agitated, and refused to stop arguing about the decision. I confirmed with both parties the address for mailing a copy of the decision to them and it was explained to the parties that the decision would be mailed to them. Even though I explained to the Landlord several times that the

hearing had ended, she refused to cease talking and I had to disconnect from the conference call.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

### Background and Evidence

This tenancy began on or about September 1, 2013. The Landlord testified that the tenancy ended on October 31, 2013; however, the Tenants testified they left the rental unit on September 30, 2013. The rent was to be \$1,100.00 per month and the Tenants paid the Landlord a security deposit of \$550.00.

The Landlord testified she had a written tenancy agreement with the tenants, although no written tenancy agreement was submitted in evidence. The Landlord testified the rental unit was in good condition when the Tenants moved in. She testified that she did not do an incoming condition inspection report because the Tenants knew what they were getting when they moved in. She testified the Tenants left the rental unit on October 31, 2013.

The Tenants denied signing a tenancy agreement. They testified they became uneasy with the tenancy when they were told they could not use the oven in the rental unit and other terms that seemed odd to them. The Tenants testified they and the Landlord agreed the tenancy would end and they moved out on September 30, 2013, as it appeared to them the Landlord had other renters to move in.

The Landlord claims the Tenants painted a door in the rental unit a different colour. According to the Landlord the door had an oil finish applied to it before it was painted. The Landlord claims the Tenants damaged the carpet with paint from the door. The Landlord claims the Tenants left the rental unit unclean. In evidence the Landlord submitted a bill \$51.49 for paint and a photocopy of a picture. The photocopy is of questionable quality but appears to depict a stained rug and a door. The Landlord has also claimed \$75.00, apparently for the labour of painting. The total claim of the Landlord is **\$193.69**. The Landlord did not explain what the balance of \$67.20 was claimed for, although a portion of this may have been the \$50.00 filing fee for the Application.

The Tenants testified they did not paint the door or stain the carpet or leave the rental unit unclean. They testified they are students and could not afford to paint the door,

even if they wanted to. They testified the door was painted when they moved. The Tenants further testified they were not given an opportunity to do an incoming condition inspection report and the Landlord is just trying to keep their security deposit.

The Landlord testified that the rental unit was in good shape when they moved in. She testified she had to paint the door for the next tenants to move in, after these Tenants.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events in another way, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim must fail.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find the Landlord has insufficient evidence to prove the Tenants painted the door, caused any other damage to the rental unit or left it unreasonably dirty.

Without an incoming condition inspection report, it is difficult for the Landlord to establish the condition of the rental unit at the outset of the tenancy. The Tenants deny the Landlord's claims, and the Landlord provided no other evidence to establish that the Tenants painted the door, damaged the carpet, or left the rental unit unclean.

In any event, by failing to do an incoming condition inspection report the Landlord has extinguished her right to claim against the security deposit for damages, under section 24 of the Act.

For the above reasons, I find the Landlord has failed to prove the Tenants breached the Act or tenancy agreement and I dismiss the Landlord's Application, without leave to reapply.

Pursuant to the Act and Policy Guideline 17, I must order that the Landlord return the deposit of \$550.00 to the Tenants immediately and I grant the Tenants an order under section 67 for the balance due of **\$550.00**. This order must be served on the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Landlord had insufficient evidence to prove her claim against the Tenants. By failing to do an incoming condition inspection report the Landlord extinguished the right to claim against the deposit for damages under section 24 of the Act. The Landlord must return the security deposit to the Tenants and the Tenants are granted a monetary order enforceable in Provincial Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 21, 2014

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Residential Tenancy Branch

