



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC RR FF O

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization for the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, to recover the filing fee, and "other", however details of the remedy being sought under the *Act* were not clear in the tenant's application for "other".

The tenant and an agent for the landlord, "LL", (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that met the requirements of the rules of procedure and was presented during the hearing. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The parties confirmed that they received evidence from the other party prior to the hearing and that they had the opportunity to review that evidence prior to the hearing. I find the parties were served in accordance with the *Act*, as a result.

### Preliminary and Procedural Matters

At the outset of the hearing, the tenant requested to reduce her claim from the original amount being claimed of \$425.00 to \$250.00 for "painting". I find a reduction in the tenant's claim does not prejudice the landlord and permitted the tenant to amend her application to \$250.00 for "painting" as a result.

During the hearing, the tenant also requested for assistance in dealing with the security deposit as the parties disagreed with the amount paid by the tenant as to the amount of the tenancy agreement. As the tenancy has not ended, I find this portion of the tenant's application to be premature and **I dismiss** the tenant's application for "other" in relation to her security deposit as a result, **with leave to reapply**.

#### Issues to be Decided

- Is the tenant entitled to a monetary order under the *Act*, and if so, in what amount?
- Has the tenant provided sufficient evidence that she is entitled to a rent reduction under the *Act*?

#### Background and Evidence

The parties confirmed that a copy of the tenancy agreement was not submitted by either party in evidence. The parties agreed that a month to month tenancy agreement began on July 1, 2012. Monthly rent of \$750.00 is due on the first day of each month. The tenant claims she paid a security deposit of \$400.00 at the start of the tenancy which the agent disputed. The agent stated that the tenant only paid \$100.00 towards a security deposit of \$375.00 but has not paid more than \$100.00 to date. As a result, the parties disputed the amount of security deposit paid by the tenant. The parties confirmed the tenant remains in the rental unit and the tenancy continues.

The tenant stated that she is claiming for \$250.00 for compensation for "painting" of a room in the rental unit. The tenant testified that she did not have a written tenancy agreement which indicated that painting could be performed in lieu of rent. The agent referred to page two of the landlord's evidence which indicates that the tenant was permitted to paint the "spare bedroom" and that the tenant "surprised" the landlord by also painting the living room. Also on page two of the landlord's evidence, the landlord writes "we agreed to cover the cost of paint" but later writes that the tenant told her to "forget it" due to a fine incurred of \$100.00 from the Strata due to noise complaints from neighbours.

#### Analysis

Based on the documentary evidence from the landlords, the oral testimony provided by both parties during the hearing, and on the balance of probabilities, I find the following.

### Test for damages or loss

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 tenant 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 landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did everything possible to minimize the damage or losses that were incurred.

As the tenant confirmed that a written tenancy agreement did not include a term or a written agreement between the parties that painting could be performed by the tenant in lieu of paying rent to the landlord, **I find** the tenant has not met the burden of proof and has provided insufficient evidence to prove her claim. Therefore, **I dismiss** the tenant's claim for \$250.00 for painting, and a rent reduction due to insufficient evidence, **without leave to reapply**.

As the tenant's application did not have merit, **I do not grant** the tenant the recovery of the filing fee.

### Conclusion

The tenant's application did not have merit, and is dismissed, without leave to reapply.

The tenant's application for "other" in relation to the security deposit is premature as the tenancy has not ended, and is dismissed with leave to reapply.

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: February 27, 2014

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Residential Tenancy Branch

