



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND MNR MNSD MNDC FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The landlord applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for authorization to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

An agent for the landlord (the "agent") and tenant "LR", who indicated she was representing both tenants, appeared at the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing.

The tenant confirmed that the tenants received the documentary evidence from the landlord and that they had the opportunity to review the evidence prior to the hearing. The tenant also confirmed that the tenants did not submit documentary evidence in response to the landlord's claim. I find the tenants were served in accordance with the *Act*.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

### Background and Evidence

The parties agreed that a fixed term tenancy agreement began on May 1, 2012 and reverted to a periodic, month to month tenancy agreement after May 1, 2013. Monthly rent in the amount of \$800.00 was due on the first day of each month. The tenants paid a security deposit of \$400.00 at the start of the tenancy, which the landlord continues to hold.

The parties agreed that the tenants vacated the rental unit on January 31, 2014. A condition inspection report was submitted in evidence by the landlord. According to the condition inspection report, the incoming condition inspection was completed on May 1, 2012 and the outgoing condition inspection was not dated, although there is a stamp on the condition inspection report that reads "RECEIVED FEB 13 2014". Although the agent's testimony changed during the hearing, the parties did ultimately agree during the hearing that the tenant was present on January 31, 2014 at the move out condition inspection and ultimately refused to sign the outgoing condition inspection report. The tenant stated that she refused to sign the report as she did not agree with the outgoing condition inspection report.

The landlord has claimed for \$387.50 comprised of the following:

Item #	Description	Amount
1	Carpet cleaning	\$85.00
2	Painting and material (repainting of rental unit)	\$302.50
<b>TOTAL</b>		<b>\$387.50</b>

### Settlement Agreement

During the hearing, the parties agreed on a mutually settled agreement regarding item #1 above. The tenant agrees that the tenants owe the landlord \$85.00 for carpet cleaning. As a result, item #1 will not be included in the analysis section of this decision as all matters which form part of the settlement agreement were agreed upon by the parties, pursuant to section 63 of the *Act*, and form a final and binding agreement between the parties as mutually resolved matters related to this tenancy.

### Evidence regarding remaining item #2

Item #2 is for \$302.50 for re-painting of the rental unit and for re-painting materials. The agent referred to the condition inspection report in evidence which reads “smoke” in several places on the condition inspection report. The agent testified that the rental unit was painted in May 2012 before the tenant moved into the rental unit. The agent confirmed that the condition inspection report did not indicate that the paint was “new” or that the report indicated that the rental unit had been painted at the start of the tenancy. The agent also confirmed that the landlord did not submit receipts or photos to support that the interior paint was new at the start of the tenancy.

The tenant stated that the interior paint was not new when the tenancy started. The tenant disputed the agent’s claim that the rental unit had been painted before she moved into the rental unit. The tenant disputed that she smoked in the rental unit and that there was the smell of smoke in the rental unit, which is why she refused to sign the outgoing condition inspection report as she disagreed that there was smoke, the smell of smoke or damage to the paint in the rental unit. The tenant stated that although her husband smoked, he only smoked outside of the rental unit and not inside the rental unit.

The agent submitted a receipt dated February 7, 2014 for re-painting of the rental unit, and the agent stated that the rental unit has not been rented since the tenants vacated on January 31, 2014, as there is “still a smell of smoke in the rental unit”, which the tenant disputed. The landlord did not provide any receipts from May of 2012 supporting that the rental unit was painted in May of 2012.

### Analysis

Based on the documentary evidence and the undisputed testimony of the agent, 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.

**Item #2** – Item #2 is for \$302.50 for re-painting of the rental unit and for re-painting materials. Although the agent referred to the condition inspection report in evidence which reads “smoke” in several places on the condition inspection report, I note that the tenant refused to sign the outgoing condition inspection report citing that she disagreed with what the agent wrote on that report.

According to Residential Tenancy Branch Policy Guideline #40 – Useful Life of Building Elements, the useful lifespan of interior paint is four years. I note that although the agent testified that the rental unit was painted in May of 2012 before the tenant moved into the rental unit, the tenant disputed that the paint was new in May of 2012.

The condition inspection report does not indicate that the paint was new at the start of the tenancy, and the landlord failed to submit receipts, photos or other documents to support that the paint in the rental unit was new in May of 2012. Furthermore, even if I were to find that the paint was new in May of 2012, which I do not, the landlord’s claim of \$302.50 would be reduced by approximately 50% to account for depreciation as the tenancy was nearly two years in length.

I prefer the evidence of the tenant over that of the agent as the agent stated that the rental unit had been painted in May of 2012, yet the tenant moved into the rental unit on May 1, 2012. Furthermore, the tenant’s testimony did not change during the hearing, while the agent’s testimony did change during the hearing, for example, in relation to the agent’s changing testimony related to the date of the outgoing condition inspection report. I find it highly unlikely that the rental unit was painted on the same day the tenant moved into the rental unit considering that the condition inspection report did not indicate that the paint was “new” or “newly painted”.

Based on the above, I find that the landlord has provided insufficient evidence to prove this portion of their claim. As a result, **I dismiss** this portion of the landlord’s claim due to insufficient evidence, **without leave to reapply**.

As only a portion of the landlord’s claim had merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$25.00**, which is half of the original filing fee amount.

The landlord continues to hold the tenants’ security deposit \$400.00 which has accrued \$0.00 since the start of the tenancy.

**Monetary Order – I find** that the landlord has established a total monetary claim in the amount of **\$110.00** comprised of \$85.00 for carpet cleaning by mutual agreement described above, plus \$25.00 of the filing fee, and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit.

**I ORDER** the landlord to retain **\$110.00** of the tenants' security deposit of \$400.00 in full satisfaction of the landlord's claim.

**I ORDER** the landlord to immediately return the remainder of the tenants' security deposit balance owing in the amount of \$290.00. **I grant** the tenants a monetary order pursuant to section 67 of the *Act* for the balance owing by the landlord to the tenants in the amount of **\$290.00**. Should the tenants require enforcement of this order, the tenants must serve the landlord and the monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The landlord has established a total monetary claim of \$110.00. The landlord has been ordered to retain \$110.00 of the tenants' security deposit of \$400.00 in full satisfaction of the landlord's claim. The landlord has also been ordered to immediately return the remainder of the tenants' security deposit balance owing in the amount of \$290.00.

The tenants have been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the landlord to the tenants in the amount of \$290.00. Should the tenants require enforcement of this order, the tenants must serve the landlord and the monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that 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: June 16, 2014

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Residential Tenancy Branch