



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ADVENT REAL ESTATE SERVICES BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with the Landlord's claim to obtain a monetary order for alleged damages to the rental unit, to keep all or a portion of the security deposit in compensation, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The Landlord was represented by an Agent. 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 evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Preliminary Issues

During the course of the hearing, the Agent of the Landlord referred to documentary evidence which was not before me. The Agent for the Landlord testified he could not recall when the evidence was submitted to the branch. There is no record of the evidence referred to by the Agent being submitted to the Branch.

I note that under the rules of procedure, section 2.5, the Landlord was required to submit copies of all evidence they intended to rely on at the hearing at the time they filed their Application on August 7, 2014. The only documentary evidence from the Landlord was submitted on August 12, 2014, some five days after the Landlord filed their Application. This consisted of a one page registered mail receipt showing mail had been sent to the Tenant on August 8, 2014.

The Tenant did acknowledge receiving evidence from the Landlord sometime in the middle of August of 2014. He testified he received a copy of the Landlord's Application,

a condition inspection report for the last tenancy before this subject tenancy occurred, the subject tenancy agreement, three photographs and the condition inspection report for this subject tenancy.

The Agent confirmed he had received the evidence of the Tenant, which consisted of a four page statutory declaration. The Tenant's declaration was before me. The Agent did not request an adjournment to provide additional copies of evidence.

I proceeded with the hearing allowing the Agent for the Landlord to testify as to their evidence and I confirmed the relevant dates and information with both parties as they referred to their documentary evidence.

#### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation for damage to the rental unit?

Is the Landlord entitled to retain any portion of the security deposit?

#### Background and Evidence

The Agent for the Landlord testified that the tenancy began on June 1, 2012, and ended on July 31, 2014. The parties agreed that the Tenant had paid the Landlord a security deposit of \$750.00.

The Landlord is claiming that the Tenant damaged a bathroom door in the rental unit.

The Landlord's position is that there is a hole in the back of the bathroom door and since it was not recorded on the incoming condition inspection report, it must have occurred during the tenancy and therefore, the Tenant is responsible for the damage.

The Tenant is claiming that the damage to the door was done prior to him taking possession of the rental unit. The Tenant has averred that neither he nor the Agent of the Landlord conducting the condition inspection report went into the bathroom and closed the door, which is the only way the damage could be seen. He explains that the bathroom was quite small and they simply looked into the bathroom from outside the doorway. The Tenant claims he did not notice the hole in the bathroom door until after he moved into the rental unit.

The Tenant also avers that he noticed there were prior attempts to repair the hole in the back of the door and these failed. He testified that the Landlord's photographs would support his position.

The Agent for the Landlord and the Tenant agreed that an outgoing condition inspection report was performed on July 28, 2014.

The Tenant testified that he did not receive a copy of the condition inspection report until sometime in the middle of August 2014, when he received the Landlord's evidence package.

Both the Agent and the Tenant acknowledge that the Tenant would not agree at the time of the report being made on July 28, 2014, that the Tenant had damaged the bathroom door.

The Landlord has claimed \$300.00 for repair of the door, although no evidence was provided as to the actual amount it cost to repair the door.

### 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 for 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 acted reasonably to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant.

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 acted reasonably 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, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on the above, the evidence and testimony before, me and on a balance of probabilities, I find that the Landlord has failed to prove the Tenant has breached the Act or tenancy agreement and caused damage to the rental unit. Furthermore, I also find that the Landlord has extinguished their right to claim against the security deposit.

I find the Landlord failed to provide sufficient evidence to support their claim that the Tenant damaged the bathroom door. I accept the undisputed evidence of the Tenant that the Agent conducting the incoming condition inspection report did not look at the back of the bathroom door. Furthermore, on the evidence before me it is just as likely that the damage was there before the Tenant moved in as it is that the Tenant may have caused this damage. Therefore, I find on the balance of probabilities that the Landlord had insufficient evidence to prove the Tenant damaged the door.

In addition to the above finding, section 36 of the Act and section 18 of regulation required the Landlord to provide the Tenant with a copy of the condition inspection report within 15 days after the inspection was completed. The report was mailed to the Tenant on August 8, 2014, and under section 90 of the Act, the Tenant is deemed to have received it five days later, on August 13, 2014. As the report was completed on July 28, the Landlord should have provided to the Tenant no later than August 12, 2014. Therefore, I find the Landlord extinguished the right to claim against the security deposit under section 36 of the Act and section 18 of the regulation as they did not provide the Tenant with a copy of the report with 15 days of its completion.

For all the above reasons, I find I must dismiss the Application of the Landlord without leave to reapply, and I order the Landlord to return the entire security deposit of \$750.00 to the Tenant.

Pursuant to section 67 of the Act and policy guideline 17, I grant and issue the Tenant a monetary order in the amount of \$750.00 which may be enforced against the Landlord if the Landlord fails to return the security deposit to the Tenant.

Conclusion

The Landlord has failed to prove the Tenant damaged the door in the rental unit. The Landlord has also extinguished their right to claim against the security deposit.

I dismiss the Application of the Landlord without leave to reapply and I order the Landlord to return the security deposit to the Tenant forthwith.

The Tenant is granted and issued a monetary order in the amount of \$750.00, which may be enforced in the Provincial Court.

This decision is final and binding on the parties, except as 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 26, 2015

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Residential Tenancy Branch

