



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for damages to the unit and for an order to retain the security deposit and pet damage deposit (the “Deposits”) in partial satisfaction of the claim.

The landlord’s agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on September 14, 2014.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord’s agent appeared gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain Deposits in partial satisfaction of the claim?

### Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on June 10, 2014 and was to expire on August 31, 2014. Rent in the amount of \$975.00 was payable on the first of each month. The tenant paid a security deposit of \$487.50 and a pet damage deposit of \$487.50. The landlord stated the tenant was overholding the rental unit and did not vacate until September 4, 2014.

A move-in condition inspection report was completed. The tenant did not participate in the move-out condition inspection report. The rental unit was fully renovated when the tenancy commenced.

The landlord claims as follows:

a.	Damage to hardwood floors, doors, removal of deadbolts and paint	\$2,173.96
b..	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$2,223.96</b>

The landlord's agent testified that the tenant caused damage to hardwood floors in both of the bedrooms. The agent stated that the damage in both rooms appears to be from a metal bed frame being dragged over the floor without proper rollers or protection causing scratched all over the floors. Filed in evidence are photographs.

The landlord's agent testified that three doors in the rental unit were damages as it appears someone kicked those leaving holes. The agent stated that there were also two deadbolts removed from the doors that had to be replaced.

The landlord's agent testified that they also had to do some miscellaneous painting on two walls as it appears that there was either a coat rack or hockey stick placed against the wall causing a large amount of scuffing.

The landlord's agent testified that the total cost of the repairs was \$2,173.96. Filed in evidence is a receipt.

## Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

### **Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I accept the undisputed testimony of the landlord's agent that the tenant caused damage to the wood floors in the bedrooms; damaged three doors that were broken as

a result of someone kicking holes in them; by removing two deadbolts from the doors; and leave scuff marks on the walls.

I find this damage was not normal wear and tear, it was damage caused from the action or neglect of the tenant. I find the tenant has breached the Act, when they failed to leave the rental unit undamaged at the end of the tenancy and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost for make the repairs in the amount of **\$2,173.96**

I find that the landlord has established a total monetary claim of **\$2,223.96** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the Deposits totaling **\$975.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,248.96**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

#### Conclusion

The landlord is granted a monetary order and may keep the Deposits in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: March 27, 2015

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Residential Tenancy Branch