



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KAHL REALTY & PROPERTY MGMT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MND, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- a monetary order for unpaid rent, damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties (Tenants, Landlord's agent and 2 Landlord witnesses) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions.

The landlord's representative testified that the landlord's Application for Dispute Resolution package was served to both tenants by registered mail on September 11, 2014. Both tenants confirmed receipt of the package. Based on the testimony provided and pursuant to section 89 and 90 of the *Act*, I find the tenants both deemed served with the landlord's dispute resolution package on September 16, 2014, 5 days after its registered mailing. The landlord acknowledged receipt of the tenants' evidence package. I accept that the landlord was duly served with the tenants' evidence for hearing.

### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent, damage and losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenants' security deposit towards any monetary award?

Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

This tenancy began on March 13, 2014 for a fixed term of six months. The rental amount of \$1400.00 was payable on the first of each month. The landlord testified that the residence was purchased when new in approximately 2008. Prior to this tenancy, the property owner resided within the residence. The landlord's representative testified that the landlord continues to hold a security deposit in the amount of \$700.00 paid by the tenants on March 3, 2014. The landlord submitted a copy of the residential tenancy agreement, the move-in condition inspection report as well as an unsigned move-out condition inspection report and invoices reflecting repairs at the end of tenancy.

The landlord's representative testified that the tenants were reminded on August 6, 2014 that their tenancy was scheduled to end August 31, 2014. The landlord's representative testified that the tenants failed to advise whether they intended to stay or remain in the rental unit at the end of the fixed term. I note the tenancy agreement submitted by the landlords show that the tenancy was fixed for 6 months ending August 31, 2014 with no provision for renewal. Both parties have initialed beside the clause in the tenancy agreement stating, "At the end of this fixed length of time, the tenancy must end and the tenant must move out of the residential unit ...." The landlord's representative testified that the tenants moved out on August 31, 2014. The landlord's representative testified that the tenants did not vacate the residence on or before 1:00 p.m. on August 31, 2014 while the tenants testified that they moved out on or about 1:00 p.m. that day. The landlord does not dispute that the tenants vacated the residence before the end of the day on August 31, 2014. The landlord's representative testified that the tenants left damage in the rental unit when they vacated. The landlord sought a monetary award in the amount of \$1160.58.

The landlord's representative testified that the tenants were given an opportunity on August 31, 2014 and on September 2, 2014 to take part in a condition inspection of the residence. The property owner and landlord's representative conducted an inspection in the absence of the tenants on September 2, 2014. The landlord's representative testified that no move-out condition inspection report was provided to the tenants. The property owner testified to the condition of the residence prior to this tenancy, stating that he was the previous resident on the premises. He testified that everything within the residence was in very good condition prior to the commencement of this tenancy.

Tenant NC testified that she and her co-tenant (Tenant CC) advised the landlord's representative that they would be able to conduct a joint condition inspection at 1:00 p.m. on the day of move-out, August 31, 2014. Tenant NC's undisputed testimony was

that the landlord's representative said she was not available at that time and was only available at 11:00 a.m.

The landlord's representative testified that a light was broken in the unit and that it cost \$130.00 to repair this broken light. She also testified that one screen door was missing and another was damaged when she and the property owner conducted a move-out condition inspection. She testified that the cost to replace one screen door was \$80.00. The landlord's representative testified that there were burn marks and stains on the kitchen counter, requiring it to be refinished at a cost of \$593.60. The landlord's representative also testified that the tenants left an outstanding water bill in the amount of \$460.88. Invoices were provided by the landlord documenting all of these costs except the replacement of the light.

The tenants both testified that they had paid the water bill in full. Tenant NC testified that the water bill was in both tenants' name and she did not want her credit affected. Tenant NC and Tenant CC both testified that they ensured the water bill was paid. In response to the tenants' claim, the property owner testified that he was unsure whether the bill was paid at this time. He testified that he had not checked the status of the bill in several months.

With respect to the damage alleged, Tenant NC testified that the light broken in the rental unit was broken at the start of their tenancy and remained that way. She testified that the counters were in poor condition and that any damage would have not been as severe had the counters been properly finished in the first place. Further, both tenants testified that there were no screens in place over the course of their tenancy.

### Analysis

Subject to section 35 and 36 of the *Act*, the tenant and landlord are required to participate in a condition inspection of the rental unit on move-in and on move-out. A landlord is required to provide at least two opportunities for the tenant to participate in an inspection. Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In this case, while the landlord filed for authorization to retain the tenant's security deposit, the landlord did not provide a condition inspection report to the tenants. Further, I find that, based on all of the testimony provided, the landlord did not provide two reasonable opportunities for the tenants to participate in a condition inspection at

the end of the tenancy. Based on the lack of provision of the condition inspection report at the end of tenancy and the failure of the landlords to provide full opportunity to the tenants to participate in a condition inspection, I find that the landlord would not be entitled to retain the tenant's security deposit.

Section 72(2) of the *Act* states that if an arbitrator orders a tenant to pay a landlord, the amount owed may be deducted from any security deposit due to the tenant. The landlord sought a monetary order for damages to the rental unit in the amount of \$1160.58 under section 67 of the *Act*. Section 67 of the *Act* establishes that an arbitrator may determine the amount of damage or loss resulting from a tenancy and order that party to pay compensation to the other party. In order to seek a monetary order claiming for damage or loss under the *Act*, the party making the claim bears the burden of proof. In this case, the landlord must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant(s). Once that has been established, the claimant/landlord must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord provided a copy of a water bill dated September 8, 2014, adjusted with handwritten notes from the total bill amount of \$281.92 to \$351.88. The property owner testified that he estimated the further amount owed by the tenants and added that to the balance of the entire bill. The landlord provided no more current evidence with respect to the water bill to show that it remains outstanding. In fact, when responding to the testimony of the tenants that the water bill was paid, the property owner indicated that he was unsure whether the bill was still outstanding. There is insufficient evidence provided on the part of the landlords to support their claim that the water bill remains outstanding. I find the landlord is not entitled to be compensated for the water bill from the tenants. I dismiss this portion of the landlord's claim without leave to reapply.

The tenants testified that the light that the landlord claims was broken at the end of their tenancy was broken at the start of their tenancy. Referring to the move-in inspection report signed by both tenants and the landlord, I note that all lights are marked to be in working order at the start of the tenancy. However, I also note that the landlord has produced no receipt with respect to this repair. The tenants were clear and consistent in their testimony with respect to the non-functioning light, which may not have been noticed during the move-in inspection. I find that, while the light may have been damaged by the tenants unwittingly, the landlord has failed to provide sufficient proof of loss with respect to this claim. The landlord has offered no receipt or other evidence to show the existence of a loss as required under section 67 of the *Act*. I find the landlord is not entitled to recover the cost of replacing the light within the rental unit.

The landlord has provided sufficient evidence to support the claim that a screen was missing from the residence. While Tenant CC testified she did not believe any screens were missing from the residence, correspondence between the tenants and the landlord references a missing screen as early as September 2, 2014. I note that the move-in condition inspection report, signed by both tenants and the landlord's representative acknowledged screens in all rooms but the hallway. I find that through negligence and not an intentional violation of the *Act*, the tenants are responsible for a missing screen. I note that, while the landlord only referred to one missing screen, the invoice provided refers to two screens replaced. The total invoice amount is \$80.10. I find the landlord is entitled to recover the cost of replacing one screen at the residence in the amount of \$46.57 as indicated in the details of the invoice.

The landlord applied to be compensated for re-finishing the kitchen countertop at a cost of \$593.60. The landlord testified that the counters were both stained and had burn marks in them. The tenants did not dispute these claims. The tenants submitted that the counters were sub-par and that they were easily damaged. Pursuant to the useful life guidelines within the Residential Tenancy Branch Policy Guideline 40, countertops have a useful life of approximately 25 years. Given that this home is seven years old and previously occupied by the landlord, I find that the countertops should have not required substantial repair at this point but for the actions of the tenants. I find that burn marks and substantive stains do not represent normal or reasonable wear and tear over the course of a six month tenancy. I find that the landlord is entitled to a portion (72%) of his loss for repair of the countertops. The landlord is entitled to recover \$427.39 for the countertop (i.e.,  $\$593.60 \times 7 / 25 = \$427.39$ ).

As the landlord has been partially unsuccessful in the application, and as I have found that the landlord failed to comply with the *Act* in withholding the tenants' security deposit, I find the landlord is not entitled to recover the filing fee for this application.

Pursuant to the offsetting provisions of the *Act*, I allow the landlord to retain a portion of the tenants' security deposit to satisfy the landlord's monetary award and order the landlord to return the remaining portion of the security deposit forthwith. No interest is payable on the security deposit. I issue a monetary Order in the tenants' favour as follows in the event that the landlord does not comply with this order.

Item	Amount
Counter damage (72% of re-finishing cost)	\$427.39
Screen replacement	46.57

Less Security Deposit	-700.00
<b>Total Monetary Order</b>	<b>(\$226.04)</b>

### Conclusion

I order the landlord to retain \$473.96 from the tenants' security deposit to satisfy the landlord's monetary award. The balance of the security deposit will be reduced from \$700.00 to \$226.04.

I order that that the balance of the security deposit, \$226.04 be returned to the tenants as required under section 38 of the *Act*. The tenants are provided with a monetary Order to this effect in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: April 17, 2015

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Residential Tenancy Branch

