



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

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, for an order to retain the security deposit in full satisfaction of the claim and to recover the filing fee from the tenants.

Both parties appeared, gave 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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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 the security deposit in full satisfaction of the claim?

### **Background and Evidence**

The parties agreed that the tenancy began on September 1, 2014. Rent in the amount of \$950.00 was payable on the first of each month. The tenants paid a security deposit of \$475.00. The tenancy ended on August 31, 2015.

The parties agreed a move-in and move-out condition inspection report was completed.

The landlord claims as follows:

a.	Damage door	\$315.00
b.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$365.00</b>

The landlord testified that after the move-out condition inspection was completed they notice additional damage that was not discovered when they completed the inspection as the tenants had left some items stacked outside the door.

The landlord testified that the tenants had a few items left to move and she had to leave and when she returned there was a big dent in the door. The landlord stated that the door was just over a year old at the time. The landlord seeks to recover the cost to replace the door in the amount of \$315.00.

The tenant testified that at the move-out condition inspection they agreed that the landlord could retain the amount of \$29.00 from the security deposit. The tenant stated that they did not cause any damage the door.

The tenant testified that the door is a common doorway and could have been damage when the landlord was recently doing renovation, as there was lots of heavy shelving going through the door. The tenant stated that they were lots of people using the door and it could have been damaged by anyone.

### 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.

Section 21 of the Act States a condition inspection report completed in accordance with this section is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The door that was damaged was not for the exclusive use of the tenants. The door was a common doorway, and accessible to the landlord and guest of the landlord. The evidence of the landlord was the damage was caused by the tenants moving their furniture. The tenant denied they caused damage to the door and believed that the damage could have been caused by the landlord when they were make renovations or by someone else who had access to the door.

Both versions are equally probable. As the onus is on the landlord to prove a preponderance of evidence to the contrary that the damage was caused by the tenants, I find the landlord has not met the burden of proof. Therefore, I find the landlord's application for compensation for damage to the door must be dismissed.

As the landlord was not successful with their application, the landlord is not entitled to recover the filing fee from the tenants.

The tenants paid a security deposit of \$475.00 and the tenants authorized the landlord to retain the amount of \$29.00. The landlord is currently holding the amount of \$446.00.

As I have dismissed the landlord's claim, I order the landlord to return to the tenants the balance due of the security deposit in the amount of \$446.00. The tenants are granted a formal order in the amount stated above, should the landlord fail to comply with my order. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The landlord's application for a monetary order is dismissed. The landlord is order to return to the tenants the balance due of their security deposit as stated above.

The tenants are granted a monetary order for the balance due of the security deposit, should the landlord fail to comply with my order.

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 20, 2015

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Residential Tenancy Branch

