



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

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

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing by conference call and gave testimony. Both parties confirmed receipt of the notice of hearing package and the landlords' submitted documentary evidence. The tenants did not submit any documentary evidence.

Both parties clarified and agreed that the landlord had sent the notice of hearing package by Canada Post Registered Mail on September 11, 2014 and that the package was returned by Canada Post as "unknown/moved" as noted on the envelope. The landlord contacted the tenant, J.U. who confirmed that the tenant's address was correct. The tenant, J.U, stated that another tenant must have notified Canada Post that the tenant was no longer residing there in error. The landlord re-sent the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail. The tenants confirmed service in this manner and that the tenants received the package on October 10, 2014.

### Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Are the landlords entitled to retain all or part of the security deposit?

Are the landlords entitled to a monetary order to recover the filing fee?

### Background and Evidence

This tenancy began on May 1, 2013 on a fixed term tenancy ending on April 30, 2014 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated April 5, 2013. The monthly rent was \$2,000.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$1,000.00 was paid on April 8, 2013.

Both parties confirmed in their direct testimony that the landlord returned \$371.25 of the original \$1,000.00 security deposit on October 10, 2014 as this portion of the security deposit was not being disputed.

The landlords stated that at the end of the tenancy after the tenants moved out, the landlords discovered damage to the rental premises. The landlords seek a monetary claim of \$628.75 which consists of:

- cost of repairing 64 holes and marks and painting for \$498.75; and
- \$130.00 for the cost of repairing holes in the cabinetry caused by the tenants installing two spice racks.

The landlords stated that approximately 64 nail holes and marks throughout the rental unit were left by the tenant requiring filling/repair and painting as noted on the completed condition inspection report dated August 31, 2014. The landlords also stated that the tenant had installed a spice rack without permission by mounting brackets on the cabinets.

The landlords have provided copies on the completed condition inspection reports for the move-in (completed May 26, 2013) and the move-out (completed August 31, 2014). The landlords have also provided photographs of the cabinets before the tenancy began and of the same cabinets at the end of the tenancy during the condition inspection for the move-out. The landlords have submitted copies of invoices/receipts for \$498.75 for the cost of repairing the holes in the walls and \$130.00 for the cost of repairing the holes in the cabinets.

The tenants have confirmed that approximately 64 holes and marks were left by the tenants at the end of the tenancy. The tenants have no issue with the invoice itself, but question that the landlords had the entire basement re-painted instead of touch ups in comparisons to the other areas.

The landlords decided upon recommendation from the painter that the touch-ups would be too noticeable and had the basement area re-painted.

The tenants confirmed that the spice rack was installed without the landlords' permission or knowledge, but disputed that no invoice/receipt was provided for the landlords' claim for repair of the cabinetry. The tenants stated that the landlord was relying on a quote for the repair work.

The landlord gave direct testimony that the quote was from August 2014 and since that time the landlord has paid and received a receipt for the work being claimed. The landlords stated that he now possesses a receipt for the work being claimed, but failed to submit a copy for the hearing.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear.

I find based upon the landlords' documentary evidence and the direct testimony provided by both parties that the landlords have established a claim that the tenants left the rental unit with damage which is considered beyond normal wear and tear. The tenants acknowledged leaving 64 holes and marks requiring repair which cannot be considered reasonable wear and tear. The tenants have also conceded that two spice racks were installed without the landlords' permission or knowledge. These issues are also shown in the landlords' evidence in the submitted copy of the completed condition inspection reports for the move-out and the submitted photographs at the beginning and the end of the tenancy.

A notation was made on completed condition inspection report for the move-out which states, "TBA after discussing with owner + getting quote, I agree to the following deductions from my security and/or pet damage deposit." I find on a balance of probabilities that this notation was made by the parties and that the tenants had conceded the damage and that the parties would wait to get quotes to determine the tenants' liability for repairs.

On the landlord's claim of \$498.75 for the repair of 64 holes and marks, I find that the landlord has established a claim by providing a paid invoice of an actual amount for the work performed to repair the damage caused by the tenants. This portion of the claim is granted.

On the landlord's second claim of \$130.00 for repair of drilled holes in cabinetry, I find although the landlord failed to provide a paid invoice/receipt for the quoted repairs, I find that the landlord has provided reasonable and sufficient evidence that work was completed for the actual claimed amount. The landlord provided a quote for the work and has provided direct testimony that the amount claimed was paid. On a balance of probabilities this portion of the claim is granted.

The landlord has established a total monetary claim of \$628.75. The landlord having been successful is entitled to recovery of the \$50.00 filing fee. I order that the landlord may retain the remaining \$628.75 of the security deposit in partial satisfaction of this claim and I grant a monetary order under section 67 for the balance due of \$50.00.

### Conclusion

The landlord may retain the remaining \$628.75 security deposit.

The landlord is granted a monetary order for \$50.00. The landlord must serve the tenant with the order. Should the tenant fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court for enforcement.

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 02, 2015

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Residential Tenancy Branch

