



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC MNSD FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Sections 45, 46 and 67;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

### **SERVICE:**

Both parties attended and the tenant agreed he received the Application for Dispute Resolution by registered mail but did not receive the evidence of invoices as stated by the landlord. I find that the tenant was legally served with the hearing documents according to sections 88 and 89 of the Act but not with the evidence. The landlord was given two weeks until June 18, 2015 to submit the evidence to the tenant and also to the Residential Tenancy Branch who also had not received the alleged evidence by registered mail.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that there were damages to the property, that they were beyond reasonable wear and tear and the cost to cure the damage? Is the landlord entitled to recover the filing fee?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced on April 1, 2014 on a fixed term lease to March 31, 2015 in a condo that was built in 2012, rent was \$3500 and a security deposit of \$1750 was paid. It is undisputed that the tenant and landlord mutually agreed to end the tenancy on February 15, 2015 as there was a new tenant approved by the landlord to take his place. The landlord is claiming \$1750 but his evidence of costs was not received by the tenant or the Branch, although

he said he sent them two weeks ago by registered mail; he said he had the registered mail numbers at home and would send them. He was given until June 18, 2015 to send any evidence again by fax or mail to the tenant and the Residential Tenancy Branch before this Decision was finalized. I emphasized to him the importance of providing it as soon as possible to the tenant so he would have an opportunity to respond. The tenant said he had overpaid his rent and was advised to submit his own Application with proof to have a hearing on that issue.

On the move-out Condition Inspection Report is noted that a sink stopper is missing, a front door lock is missing and a bathrobe holder/hook. The tenant said he had no idea what these items were and they were added after he signed the report. The landlord explained that the door lock cost over \$900 and was in a box under the stairs as he had not installed it, the sink stopper was missing from the sink and the bathrobe holder/hook was under the sink in the master bathroom as it had fallen off the wall. His girlfriend said she saw the box with the door lock under the stairs before move-in but did not inspect it after move-out, she is not sure about the sink strainer and she had used the bathrobe hook herself but did not observe if it was missing. The tenant said he did not know anything was in storage in the unit and never saw the extra lock or bathrobe hook and did not take a sink strainer; he objected that the door lock under the stairs and a robe hook under a sink were never mentioned in the move-in report. In evidence is the tenancy agreement, move-in and move-out Condition Inspection Reports and statements of the parties.

An extensive office search was conducted and a look out instituted for the landlord's alleged evidence. Only one copy of an invoice dated March 20, 2015 was submitted by the landlord for a door lock totalling \$1066.24 and it was received on June 5, 2015, the day after the hearing was conducted. The tenant provided evidence in response showing the condition inspection report done at move-in which he contends shows no items in storage and does not mention a door lock; he submits that a receipt for a door lock subsequent to the end of the tenancy does not prove there was a door lock as a loose item in the unit while he was there. He states he believes the landlord may be forgetful or less than truthful as he had other problems in hearings with tenants.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

Monetary Order:

Awards for compensation are provided 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 did whatever was reasonable to minimize the damage or loss.

Although the tenant violated the *Act* by not completing his fixed term tenancy, I find the landlord did not dispute that he had reached an agreement with the tenant and put another tenant in place with no loss.

The onus of proof is on the landlord to prove his monetary claim. I find the landlord noted the front door lock was new in 2014 but it was not on the door but loose in a box under the stairs and the strainer and bathrobe hook were original to the condo in 2012. He provided no receipt for the original door lock which he states was in the unit but which the tenant denies ever seeing. I find the landlord has not satisfied the onus. I find insufficient evidence to prove that there was a door lock loose under the stairs or a robe hook under a sink. There is no notation on the condition inspection report at move-in that this item was there. I find insufficient evidence to prove that there was a new door lock existing in a box and it was removed by the tenant. While the landlord's friend says she saw the box, she did not know what was inside and she did not inspect at move-out so I place little weight on her evidence. I dismiss this portion of the landlord's claim.

In respect to the tenant's submission questioning the veracity of the landlord's evidence, I note the landlord gave sworn evidence of registered mail service of invoices and evidence to the tenant and the Residential Tenancy Branch before the hearing and neither of these alleged registered mail deliveries were received. While one registered mail delivery might go astray, I find do not find it credible that both deliveries were not successful.

I find the weight of the evidence is that the missing robe hook and sink strainer were added to the move-out report after the tenant had signed it and vacated. I find insufficient evidence to prove that these items were taken by the tenant or of their value. I find insufficient evidence that the tenant violated his agreement by taking items from the unit. I also question the credibility of the claim as the value of items claimed by the landlord is exactly the amount of the security deposit (\$1750) although he was unable to provide invoices justifying this amount.

**Conclusion:**

I dismiss the application of the landlord without recovery of the filing fee.

As the landlord has retained the security deposit of the tenant and filed the Application to claim against it within the 15 days contemplated by section 38 of the Act but has been unsuccessful, I find the tenant now entitled to its return pursuant to Residential Tenancy Policy Guideline 17 (1). The tenant will receive a monetary order for \$1750 (no interest 2014-2015).

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: June 18, 2015

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Residential Tenancy Branch

