



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. A Monetary Order for damages to the unit – Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord withdrew its claim for rent.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy started on November 1, 2014 and ended on December 1, 2014. Rent of \$2,000.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$1,000.00 as a security deposit and \$1,000.00 for a pet deposit. No move-in or move-out condition inspection and report was completed. The Landlord received the Tenant’s forwarding address on or about December 10, 2014. The Landlord returned the pet deposit to the Tenant.

The Landlord states that the Tenant viewed the unit in August 2014 and asked to finish the basement. The Landlord states that the Parties agreed to this and also agreed that the Tenant had authority move the stairs and remove a loft wall behind the sauna and that the Landlord would provide the materials that were in the basement and workshop of the unit. The Landlord states that the Tenant told the Landlord that qualified workers would be completing the work. The Landlord states that he understood this to mean that the workers would have tickets and would complete the work to code. The Landlord states that the Landlord insisted that all the work be done to code.

The Parties agree that the Tenant started the work in October 2014 a month prior to move-in. The Landlord provided a copy of a tenancy agreement signed by the Tenant on September 25, 2014.

The Landlord's Witness states that the existing stairs were built by the Witness on or about November 2013. The Witness states that he inspected the unit after the Tenants moved out. The Witness states that the Tenants left the basement floor damaged and requiring either reinstallation or removal as it was not constructed to code. The basement stairs has inadequate landing posts and treads and requires replacement. The loft is missing the flooring and both walls. The sauna was removed leaving exposed bare walls and electrical lines. A hole was left in the kitchen floor.

From a total claim of \$20,853.00 as set out in the invoice provided by the contractor who is also the Witness, the Landlord claims \$2,000.00 for removing and correcting the basement floor concrete and not for its replacement. The Landlord claims \$1,900.00 to repair the stairs not built to code. The Landlord states that the remaining items claimed are for unauthorized work done in the kitchen, loft and sauna. The Witness states that the costs for finishing details are throughout the unit and include baseboards and a finishing layer to the concrete. The Landlord states that the work will be completed as soon as possible and depending on the outcome of this claim. The Landlord states that no benefit was obtained from the work as the original stairs did not require any repair

and any other benefit accrued by the work would be set off by the loss of the sauna and loft walls.

The Tenant states that all work done by the Tenant was authorized by the Landlord. The Tenant states that no compensation was asked for or given for the work. The Tenant provided copies of text messages and photos between the Parties in relation to the work being done throughout October and into early November 2014. The Tenant states that the work that was agreed to be done could not be finished due to the frustration of the tenancy agreement.

The Tenant states that the Landlord agreed that the Tenant's husband would do the work and that the husband did not have a ticket. The Tenant states that the Tenants also hired ticketed contractors. The Tenant states that when the Tenant asked to do the work the Landlord never asked about qualifications or supervision of the work and that there was no mention of working to code.

The Tenant states that the tenancy ended due to the loss of access to the premises and the Tenant had to find another home. The Tenant states that when the tenancy agreement was being negotiated and then finalized the Landlord did not disclose that 10 months earlier the Landlord had received a notice that the access would be removed. The Tenant states that this was only discovered after they moved into the unit. The Tenant states that she was pregnant during the negotiations for the lease and that the Landlord was aware of her pregnancy as the Tenant wanted a three year lease term. The Tenant provided copies of texts indicating the Tenant delivered her baby within days of the move-out date. The Tenant states that the unit was left in the same or better condition subject to the work that was remaining and this work could not be completed due to the frustration of the tenancy.

The Landlord states that the end of the tenancy was not the fault of the Landlord and the issue of frustration of the contract was involved. The Landlord states that at the outset of the tenancy the Tenants knew legal access was not being provided and were

told it was unsafe. The Landlord states that the Tenants should therefore have known that loss of access could occur. The Landlord states that prior to the unit being rented the Landlord lived in the unit. The Landlord states that they were unable to obtain a mortgage on the property because of the legal access issues and initially broke off lease negotiations with the Tenant for that reason. The Landlord states that the tenancy was entered into as the Landlord no longer required a mortgage. The Landlord states that the Tenants were told of the notice from the city and that the access might be replaced or refurbished and that trespass was not operative. The Parties provided copies of correspondence between their legal counsels.

### Analysis

Section 24 of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not make an offer for an inspection and does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. As no condition inspection report was completed by the Landlord at move-in, I find that the Landlord's right to claim against the security deposit was extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord's right to claim against the security deposit was extinguished, the Landlord was required to return the security deposit to the Tenant. As the Landlord failed to return the security deposit within 15 days of the receipt of the Tenant's forwarding address I find that the Landlord must now pay the Tenant double the security deposit plus zero interest in the amount of **\$2,000.00**.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Although there are no provisions in the tenancy agreement in relation to changes to the unit, I accept the undisputed evidence of an oral agreement for the Tenant to make alterations to the unit. Based on the undisputed evidence that the work started on or about October 1, 2014 and considering that the tenancy agreement was signed on September 25, 2014, I find that the oral agreement to alter the unit was a condition of the tenancy agreement and formed a part of the tenancy agreement. Whether or not the tenancy ended as a result of either Parties act or negligence, considering that there is no evidence of any completion dates for any of the work being done and given the correspondence indicating that the Landlord accepted the end of the tenancy, I also find that any agreement for the completion of the work also ended.

It is undisputed that the Tenant was authorized to move the stairs, move a loft wall and finish the basement. The texts from the Landlord during October and early November 2014 in response to the Tenant's reports and photos of work being done clearly indicate the Landlord's satisfaction with both the progress and outcome of the work. Although the Landlord claims that some work done in the unit was unauthorized, considering these text communications between the Parties, I find that the Landlord was informed of and authorized all work being done on the unit throughout October and into the early part of November 2014 when it became apparent that the tenancy was to end. As a result, I find that none of the work in the unit was unauthorized.

The requirement of doing the work up to code is disputed and there is no evidence to support this requirement other than the oral evidence of the Landlord. I would generally consider however that if the Landlord thought this requirement to be so important, this would have been in writing. As a result I find the Tenant's evidence that there was no mention of the work being done to code to be more credible. Whether or not the work was done up to code, I find that the Landlord has not substantiated on a balance of probabilities that the Tenant breached the agreement to carry out the work

and that the work that was done was done to the satisfaction of the Landlord. As the Landlord has failed to establish that the Tenant breached the Act or tenancy agreement, I dismiss the Landlord's application.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$2,000.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order 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: August 10, 2015

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Residential Tenancy Branch

