



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DR. LINA HSIAN NG CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's 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 tenant, pursuant to section 72.

The landlord's agent, EK ("landlord"), the tenant and his agent AS, attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant's agent was also a co-tenant living in the rental unit during this tenancy. However, the landlord only named the tenant as a respondent for this application.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application.

The landlord confirmed receipt of the tenant's written evidence package. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was duly served with the tenant's written evidence.

### Issues to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this Application from the tenant?

### Background and Evidence

Both parties agreed that this tenancy began on June 1, 2014 and ended on May 31, 2015, as per the fixed term tenancy agreement. Monthly rent in the amount of \$2,300.00 was payable on the first day of each month. A security deposit of \$1,150.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was provided for this hearing. The tenant, his agent wife and four children all lived in the rental unit. The landlord noted that the rental unit is a two-level, 2400-square-foot house with five bedrooms and two bathrooms.

Both parties agreed that move-in and move-out condition inspection reports were completed for this tenancy but the tenant did not sign the move-out condition inspection report because he disagreed with it. Both parties agreed that the tenant provided a written forwarding address on the move-out condition inspection report on June 1, 2015. The landlord testified that he did not have written permission from the tenant to retain any amount from his security deposit. The landlord confirmed that this Application was filed on June 10, 2015.

The landlord seeks \$1,575.00 for repainting all the walls in the rental unit after the tenancy ended. He stated that the entire house, including all walls and ceilings, was last painted on April 14, 2014, before the tenant moved in and he had an invoice for the painting but did not submit it for this hearing. The landlord stated that the tenant caused black dirt marks, nail holes and patch marks from covering nail holes, on almost every wall of the rental unit when vacating. The landlord stated that the tenant is responsible for repainting the entire unit, due to this damage, as it is not reasonable wear and tear. The landlord provided a copy of the \$1,575.00 invoice from the painting company. The date of the invoice is June 10, 2015 and the landlord indicated that the painting was completed around June 8 or 9, 2015, as he does not know how long it took but probably two to three days. The invoice indicates "repaint walls" was to be done.

The landlord did not provide photographs of the condition of the walls when the tenant moved in or out, despite the fact that he said he had photographs. The landlord agreed that the wall holes were not indicated on the move-out condition inspection report. The landlord agreed that the move-out condition inspection report did not indicate which rooms had damaged walls, despite the fact that the report listed each room on each level of the house separately. Under the "miscellaneous" category of the report, the landlord indicated "walls got marks and patched marks."

The tenant disputes the landlord's claims regarding damage, stating that the landlord is not entitled to anything for painting. The tenant stated that he has been a professional painter for 25 years. He stated that when he moved into the rental unit, he noticed that the paint was either primer or a flat, low-quality paint. The landlord stated that he spoke with the person who did the painting in June 2015 and that he was advised that the paint was regular paint and not primer. The tenant's agent stated that she notified the landlord about this paint problem when she moved into the unit and personally showed the landlord that marks would not come off the walls when wiped with a rag. She testified that this paint was white and chalky and would rub off on a cloth when wiped. Both the tenant and the tenant's agent testified that they thoroughly cleaned the rental unit, including wiping the walls and patching and sanding nail holes, when they vacated. The tenant provided a statement, dated July 27, 2015, from witness DS, stating that herself and a few other people helped the tenant clean the unit when vacating and that best efforts were made to clean marks off the walls, which was difficult because of the low-quality paint. The tenant stated that despite the low-quality paint, the marks and holes on the walls were reasonable wear and tear. The tenant noted that the nail holes were small, picture-size and not excessive. The tenant explained that the dirt marks were fingerprint-size and not excessive.

The landlord applied to offset the security deposit of \$1,150.00 against the monetary order of \$1,575.00. The tenant requested a return of double the security deposit, totaling \$2,300.00, for the landlord's failure to return it within 15 days of the end of the tenancy and providing a written forwarding address.

### Analysis

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. To prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Residential Tenancy Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlord's claim for \$1,575.00 for repairing and painting the walls in the rental unit, without leave to reapply. The landlord only provided an invoice, not a receipt for this cost. The landlord did not provide any photographs to show the condition of the walls when the tenant moved in or out. The landlord did not indicate any holes in walls on the move-out condition inspection report. The landlord did not indicate how many marks were caused, how big these marks were and where these marks were located on the move-out condition inspection report.

I find that the landlord was unable to show what damage was caused by the tenant in the unit. Although the tenant acknowledged that there were some small fingerprint-size marks on the walls, he stated that it was cleaned it to the best of his ability, and it was the inferior paint that was the reason for the inability to remove the marks. The tenant stated that some small picture nail holes in the wall were filled and sanded appropriately, as the tenant knows how to do so, given his profession as a painter.

Residential Tenancy Policy Guideline 1 states that the tenant is only responsible for repairing and painting holes if there is an excessive amount and for repainting walls if there is damage for which the tenant is responsible. I find that the landlord failed to prove an excessive amount of holes or marks on the walls because he did not prove the condition of the unit when the tenant moved out. I find that small picture nail holes and small fingerprint-size marks are reasonable wear and tear, which is permitted without the tenant having to repair or paint these areas. As it is the landlord's burden of proof on a balance of probabilities, I find that the landlord has failed to meet the above test.

Therefore, the landlord's application to retain the tenant's security deposit to offset the monetary award is dismissed without leave to reapply.

As the landlord was unsuccessful in this Application, I find that the landlord is not entitled to recover the \$50.00 filing fee from the tenant.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that the tenant is not entitled to a return of double the value of the security deposit because the landlord applied to retain it on June 10, 2015, which is within 15 days of the written forwarding address being provided on June 1, 2015. The landlord's right to claim against the deposit was not extinguished when the landlord applied to retain it, as both parties agreed that move-in and move-out condition inspection reports were completed for this tenancy. The move-out condition inspection report was completed, despite the fact that the tenant refused to sign the report because he disagreed with it.

As the landlord continues to hold the tenant's security deposit of \$1,150.00, I order the landlord to return the entire deposit to the tenant.

### Conclusion

I order the landlord to return the tenant's entire security deposit of \$1,150.00 to the tenant.

I issue a monetary order in the tenant's favour in the amount of \$1,150.00 against the landlord and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's entire application is dismissed without leave to reapply.

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: November 17, 2015

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Residential Tenancy Branch

