



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF; MNSD, FF

### Introduction

This hearing dealt with landlord AK's application against tenant DC only, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with both tenants' application against both landlords ("landlords"), pursuant to the *Act* for:

- authorization to obtain a return of the security deposit, pursuant to section 38;
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

"Landlord KK" and both tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord KK confirmed that he had authority to represent the other landlord AK ("landlord"), named in both applications, as an agent at this hearing. This hearing lasted approximately 78 minutes in order to allow both parties to fully present their submissions.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

### Issues to be Decided

Is the landlord entitled to a monetary award for damage and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement arising out of this tenancy?

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

Are the tenants entitled to a monetary award for the return of their security deposit?

Is either party entitled to recover the filing fee for their application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed that this tenancy began on July 1, 2013 and ended on May 31, 2015. Monthly rent in the amount of \$1,550.00 was payable on the first day of each month. Both parties agreed that a security deposit of \$775.00 was paid by the tenants and the landlords continue to retain this deposit. A copy of the written tenancy agreement was not provided for this hearing.

Landlord KK confirmed that he signed a blank move-in condition inspection report and provided it to the tenants to complete themselves. He stated that he performed a visual move-in inspection with the tenants, while the tenants claim that they performed the visual inspection on their own without the landlords present and sent a copy of the completed report to the landlords two weeks after filling it out. Both parties agreed that no move-out condition inspection report was completed for this tenancy. Both parties agreed that the tenants provided a forwarding address by way of an email to the landlords on May 31, 2015. Landlord KK testified that he did not have written permission from the tenants to retain any amount from the security deposit. Landlord KK confirmed that his application was filed on June 8, 2015.

The landlord seeks a monetary order of \$2,671.79 for damage to the rental unit when the tenants vacated. Landlord KK amended his claim to reduce it at this hearing from \$2,686.80 to \$2,671.79. I find that there is no prejudice to the tenants, as this is a reduction rather than an increase in the monetary order sought.

The landlord applied to offset the security deposit of \$775.00 against the monetary order sought of \$2,671.79. The tenants seek a monetary order for the return of their security deposit, totaling \$775.00. Both parties also applied to recover the \$50.00 filing fee for their respective application.

The landlord seeks \$2,101.79 for replacing a carpet with laminate flooring. Landlord KK confirmed that the tenants caused a number of stains as well as a tear in the carpet, such that it had to be replaced. The tenants dispute the landlord's claim, stating that the stains and tear were reasonable wear and tear, for which they are not responsible. The tenants noted that they steam cleaned the carpet themselves with a machine and provided a copy of the receipt for the machine rental. The landlord provided an estimate, dated June 10, 2015, in the amount of \$2,116.80 for replacing the damaged carpet with a new carpet. Landlord KK confirmed that he did not complete this carpet replacement, as laminate was used instead. Landlord KK confirmed that the laminate replacement was for \$2,101.79 but he did not submit an invoice, although he had the invoice at the time of the hearing. The tenants stated that the landlord's carpet replacement estimate was too high, as their own estimates obtained were between \$1,464.75 and \$1,615.95. The landlord provided photographs of the damaged carpet. The tenants claimed that the biggest carpet stain in the landlords' photographs was a pre-existing stain when they moved in, and that only a few stains in two of the photographs were caused by them. Landlord KK confirmed that the carpet was approximately 5 years old at the time that the tenants moved in, while the tenants stated that it was 7 years old.

The landlord seeks \$300.00 for an entry closet mirror door replacement. Landlord KK stated that that the tenants caused a crack in the bottom of the left mirror door. Landlord KK maintained that the previous tenants completed a move-out condition inspection report indicating that the mirror door was not broken and a contractor in June 2013 saw the door and told him that it was not broken. The landlord did not provide a copy of the previous move-out condition inspection report or produce any of the above witnesses to testify at this hearing. The tenants dispute the amount claimed by the landlord, indicating that the mirror door was already broken when they moved in and they noted this in their move-in condition inspection report which the landlord signed. The tenants explained that in a June 9, 2015 email from the landlord to the tenants, which the tenants provided, the landlord confirmed that he might have been wrong about the cause of the broken mirror door. The landlord provided a photograph of the damaged area. The landlord provided a copy of an invoice, dated June 19, 2015, for \$1,575.00 where it is indicated that "repair mirror closet door (exchange mirror)" and the

landlord advised that he was verbally told by the contractor about the \$300.00 price for this damage replacement.

The landlord seeks \$70.00 for a broken shower head. The landlord provided a photograph of this damage. Landlord KK confirmed that in the move-in inspection report, no notation was made about a broken shower head, as it was in good, working condition. The tenants stated that they did not damage the shower head. They explained that they did not indicate a broken shower head in the move-in inspection report because they did not notice that it was broken until the landlords told them on June 15, 2015, after they moved out. They advised that they did not use this shower head at all during the tenancy, as they replaced it right away with their own shower head because they have always preferred using their own shower head. Landlord KK relied on the same invoice for \$1,575.00, where it states “exchange shower head,” claiming that the contractor told him verbally that it cost \$70.00.

The landlord claims \$200.00 for a door repair. The landlord provided a photograph of this damage. The tenants testified that the damage to the door was reasonable wear and tear. They advised that they had placed a hook over the door to hang robes. They claimed that the robes on the hook were not heavy. The landlord relied on the same invoice for \$1,575.00 despite the fact that no mention was made of a door repair in that invoice. Landlord KK advised that the contractor told him verbally that it cost \$200.00 to repair the door.

Landlord KK claimed that the landlord was not seeking any other costs such as painting the rental unit, despite the fact that he submitted invoices for other costs.

### Analysis

#### Landlord's Application

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, 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 tenants 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 \$200.00 for a door repair, without leave to reapply. The landlord did not provide any documentary evidence to support this claim for damages. The landlord's invoice for \$1,575.00 does not mention any door repair. I find that the landlord failed to meet part 3 of the above test.

I dismiss the landlord's claim for \$300.00 for the entry closet mirror door replacement. I find that this was pre-existing damage that was clearly noted on the move-in condition inspection report where it states "crack = bottom left" of the "entry closet" section and it also states "B" which means "broken." The landlord signed the move-in condition inspection report. Therefore, I find that the landlord failed to prove that the tenants caused this damage, as it was already present when they moved in. I find that the landlord failed part 2 of the above test.

I award the landlord \$630.54 for the replacement of the carpet with laminate flooring. Although the landlord did not submit a receipt for this replacement, I accept landlord KK's testimony that \$2,101.79 was paid by the landlord for laminate flooring. Although the tenants only lived in the rental unit for a short time, they agreed that they caused a number of carpet stains in two of the landlord's photographs and that foot traffic may have caused more stains in the entryway as per the landlord's photograph. The tenants also acknowledged that they ripped the carpet accidentally with a vacuum cleaner, as shown in the landlord's photograph. Landlord KK claimed that the carpet was 5 years old when the tenants moved in, while the tenants claimed that it was 7 years old. I accept the tenants' testimony of 7 years, as the landlord failed to meet the burden of proof to show that the carpet was only 5 years old. The photographs submitted by the landlord show that the carpet was heavily stained and worn and the move-in condition inspection report shows that there were pre-existing stains in the carpet. Therefore, the carpet appeared to be older than the landlord's claim of 5 years and closer to the tenants' claim of 7 years. As per Residential Tenancy Policy Guideline 40, the useful life of a carpet is 10 years. If the carpet was 7 years old in February 2015 when the tenants moved in, it has 3 years or 30% of its life expectancy left before the landlord would have had to replace it anyway. Therefore, 30% of \$2,101.79 is \$630.54.

I award the landlord \$70.00 for the broken shower head. The landlord provided a photograph of this damage. I accept landlord KK's testimony that the landlord paid that amount for the damage, as per a verbal conversation with the contractor. I find that this damage was not noted on the move-in condition inspection report, which the tenants

filled out themselves. The tenants noted other problems in the bathroom such as the sink stopper not working and a damaged bathroom door. They did not note anything under "shower." The tenants replaced the shower head with their own, so presumably they would have noticed that the shower head was broken during this replacement. I find that the tenants are responsible for this damage.

As the landlord was only partially successful in his application, I find that the landlord is not entitled to recover the \$50.00 filing fee from the tenants. The landlord must bear the cost of his filing fee.

### Tenants' Application

Section 38 of the *Act* requires the landlords to either return the tenants' 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 tenants' provision of a forwarding address in writing. If that does not occur, the landlords are 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 landlords have obtained the tenants' 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 tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on May 31, 2015. The tenants did not give the landlords written permission to retain any amount from their deposit. The landlords did not return the full deposit to the tenants. The landlord made an application for dispute resolution to claim against this deposit, within 15 days of the end of this tenancy. The landlord's application was made on June 15, 2015.

The landlords' right to claim against the security deposit for damages was extinguished as per section 36 of the *Act*, due to his failure to complete a move-out condition inspection report. However, both parties agreed that the tenants provided a written forwarding address by way of an email. This service method is not permitted by section 88 of the *Act*. Therefore, I find that the doubling provision of section 38 of the *Act* has not yet been triggered. I find that the tenants are only entitled to the return of their security deposit of \$775.00, which will be offset against the monetary award provided to the landlord.

As the tenants were successful in their application, I find that they are entitled to recover the \$50.00 filing fee from the landlords.

The landlords continue to hold the tenants' security deposit of \$775.00. Over the period of this tenancy, no interest is payable. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' deposit of \$775.00, in partial satisfaction of the monetary award.

### Conclusion

I issue a monetary order in the tenants' favour in the amount of \$124.46 against both landlords, as their application was filed against both landlords, as follows:

Item	Amount
Award to Tenants for Security Deposit	\$775.00
Tenants' Recovery of Filing Fee	50.00
Landlord's Carpet Replacement	-630.54
Landlord's Shower Head Replacement	-70.00
<b>Total Monetary Award</b>	<b>\$124.46</b>

The tenants are provided with a monetary order in the amount of \$124.46 in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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 application to recover the \$50.00 filing fee 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: December 16, 2015

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Residential Tenancy Branch