



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MNSD, FF

### Introduction

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

- 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;
- a monetary order for damage to the rental unit pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing by conference call and gave undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenants were both served with the notice of hearing package through US Postal Services via Registered Mail on October 14, 2015. The landlord provided the Customer Receipt Tracking number in her direct testimony as confirmation of service. The landlord also stated that an online search shows that the tenants received and signed for the package on October 24, 2015. I find based upon the undisputed affirmed testimony of the landlord that the tenants have been properly served with the notice of hearing package and the submitted documentary evidence on October 24, 2015 by Registered Mail as per sections 88 and 89 of the Act. The tenants are deemed to have received the package on October 24, 2015.

### Issue(s) to be Decided

Are the landlords entitled to retain part of the security deposit in partial satisfaction of a monetary claim for damage and/or loss?

### Background and Evidence

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

This tenancy began on August 1, 2015 on a fixed term tenancy ending on September 30, 2015 as per the submitted copy of the signed tenancy agreement dated July 21, 2015. The monthly rent was \$2,000.00 and a security deposit of \$1,000.00 was paid on September 1, 2013. A condition inspection report for the move-in and the move-out were completed on August 31, 2013 and September 30, 2015.

The landlord seeks a monetary claim of \$536.90 which consists of:

|          |   |
|----------|---|
| \$129.57 | Replacement LED lightbulbs                                |
| \$207.33 | Labour and Replacement LED lightbulbs                     |
| \$200.00 | Estimated Re-Painting of damaged wall (\$165.00 plus tax) |

The landlord has submitted in support of her application:

- A completed condition inspection report for the move-in dated August 31, 2013.
- A completed condition inspection report for the move-out dated September 30, 2015.
- 8 photographs showing the damaged wall.
- Receipt from Costco for 10 LED lightbulbs totalling \$129.57.
- Invoice from DRT Services for labour and purchase of additional LED lightbulbs totalling, \$207.33
- An Estimate from S.P. & D. dated October 13, 2015 to Re-Paint the wall for \$165.00 plus tax.

The landlord stated that the tenants vacated the rental unit on September 30, 2015 on which it was discovered that there were 13 LED lightbulbs that needed to be replaced as noted on the condition inspection report for the move-out that was completed by both parties.

The landlord also seeks a monetary claim of \$200.00 based upon an estimate to repaint the effected wall as shown in the condition inspection report for the move-out and the submitted photographs. The landlord clarified that this was an estimate as her current tenants expressed that they did not want any painting done until after their tenancy. The landlord stated that she wished to honour their request.

### 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 that could be expected for a rental unit of this age.

I accept the undisputed evidence of the landlord and find that the tenants vacated the rental unit requiring the replacement of 13 LED lightbulbs as shown in the completed condition inspection report dated September 30, 2015. The landlord has provided copies of the invoices/receipts for the LED lightbulbs and for the labour charged in replacing them. On this portion of the landlord's claim, I find that the landlord has established a claim for \$336.90.

On the landlord's claim for \$200.00 for repainting the damaged wall, I find that the landlord has not established. Although the landlord has provided undisputed evidence that the tenants left the wall damaged requiring repainting, I find that the estimate provided by the landlord is for \$165.00 plus tax which would total, \$184.80. On this basis, I award the landlord \$184.80 for this portion of the claim.

The landlord has established a monetary claim of \$521.90.

The landlord having been successful is entitled to recovery of the \$50.00 filing fee. Using the offsetting provisions of section 72 of the Residential Tenancy Act, I order that the landlord may retain \$571.90 from the currently held \$1,000.00 security deposit in satisfaction of this claim. The tenants are granted a monetary order for the difference of \$428.10.

### Conclusion

The landlord may retain \$571.90 from the \$1,000.00 security deposit.  
The tenants are granted a monetary order for \$428.10 for the return of the balance.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order. 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.

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: February 12, 2016

---

Residential Tenancy Branch

