



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND MNSD MNDC FF O

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The landlord applied for a monetary order for damage to the unit, site or property, to retain the tenants' security deposit, for money owed or compensation for damage or loss under the *Act*, to recover the cost of the filing fee and "other" although no other specific remedy is identified under the *Act*.

An agent for the landlord (the "agent"), tenant M.E. (the "tenant") and T.M, who is the father and agent of the tenant B.M. (the "tenant agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

There was no dispute that the landlord's documentary evidence was received by the respondents prior to the hearing and that the tenants had the opportunity to review that evidence. Neither the tenant nor tenant agent identified any documentary evidence submitted in response to the landlord's claim.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

### Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. The fixed-term tenancy began on December 1, 2013. Originally the monthly rent was \$500.00 per

month and due on the first day of each month. In 2014 the parties reached a new agreement where monthly rent was \$511.00 per month and due on the same day of the month, the first day. The tenants paid a \$250.00 security deposit at the start of the tenancy, which the landlord continues to hold.

The landlord's monetary claim is for \$1,022.50 and is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
Item 1 – Late and NSF fees	\$300.00
Item 2 – Cleaning	\$250.00
Item 3 – Repairs	\$472.50
<b>TOTAL</b>	<b>\$1,022.50</b>

#### Item 1

Regarding item 1, the agent referred to section 2.1 of the tenancy agreement submitted in evidence which indicates that a late fee of \$25.00 will be charged for every rent cheque not delivered to the Landlord by the first of each month of the lease. In addition, the same section indicates that a \$25.00 fee will be charged for each cheque that is returned to the landlord due to there being insufficient funds in the account of the tenant ("NSF"). The agent submitted a copy of the tenants' ledger which supports that for six months, there was both a \$25.00 late fee and \$25.00 NSF fee for a grand total of \$300.00 which is comprised of \$50.00 in combined fees multiplied by six months. The ledger was reviewed during the hearing and the tenant was satisfied with the charges identified in the ledger. The tenant's agent testified that he did not feel a late fee should be applied if a cheque was provided on the date that it was due even if it was returned as NSF.

#### Item 2

The landlord is seeking \$250.00 for cleaning costs for item 2 which is supported by the condition inspection report submitted in evidence which reads in part "cleaning needed" and that a majority of items were listed as "dirty" during the move out inspection which was signed by tenant B.M. The tenant's agent testified that he felt the condition inspection was fraudulent as the landlord could have written on the condition inspection report after it was completed which the agent denied. The tenant's agent was directed to review the lines drawn throughout the condition inspection report by the agent to

ensure nothing was written in after the condition inspection report was completed. An invoice for \$250.00 was submitted in evidence in support of this portion of the landlord's claim.

Item 3

For this portion of the landlord's claim, the landlord is seeking \$472.50 for repairs to the rental unit including repairing and repainting a damaged bathroom wall, replacing a damaged bathroom door and removal of a lot of garbage. The agent referred to the condition inspection report which indicates that damage in the areas being claimed. The agent also referred to an invoice which indicates the amount being claimed.

Analysis

Based on the undisputed testimony of the agent provided during the hearing, the documentary evidence and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. 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 what was reasonable to minimize the damage or loss.

**Item 1** – For item 1, I find the landlord has met the burden of proof. I afford no weight the tenant's agent's testimony that a tenant can avoid a late fee by providing a cheque that is returned NSF on the date that the rent is due. I disagree and find that argument to be unreasonable. Furthermore, I find that providing a rent cheque that is returned NSF to have the same effect as not providing a rent cheque at all; both result in no amount of money being paid to the landlord for rent. As a result, and taking into account section 2.1 of the tenancy agreement, I find the landlord has met the burden of proof and the test for loss. Therefore, I grant the landlord **\$300.00** as claimed for this portion of the landlord's claim. The tenant's breached section 26 of the *Act* which

requires rent to be paid on the day that it is due in accordance with the tenancy agreement.

**Item 2** – Regarding item 2, I find the landlord has met the burden of proof. The landlord provided an invoice for \$250.00 for cleaning costs which I find is also supported by the condition inspection report submitted in evidence which reads in part “cleaning needed” and that a majority of items were listed as “dirty” during the move out inspection which was signed by tenant B.M.

I afford no weight to the tenant’s agent’s allegation that the condition inspection was fraudulent or altered. In reaching this finding, I have closely examined the condition inspection report which has lines drawn through the blank areas of the condition inspection report. I find those lines support the prevention of additional writing to be added once the document was completed.

In addition, I find the tenants breached section 37 of the *Act* which requires the rental unit to be left reasonably clean and undamaged, except for reasonable wear and tear. I find the state in which the tenants left the rental unit to be beyond reasonable wear and tear. Therefore, I grant the landlord **\$250.00** as claimed for this portion of the landlord’s claim.

**Item 3** – For this portion of the landlord’s claim, the landlord is seeking \$472.50 for repairs to the rental unit including repairing and repainting a damaged bathroom wall, replacing a damaged bathroom door and removal of a lot of garbage. I find the landlord has met the burden of proof given the condition inspection report which supports the damaged areas being claimed and which was signed by tenant B.M. I have also considered the supporting invoice submitted in evidence. As a result, I grant the landlord **\$472.50** as claimed for this portion of the landlord’s claim. As indicated above, the tenants breached section 37 of the *Act* by damaging the rental unit beyond reasonable wear and tear.

Based on the above, I find the landlord has met the burden of proof for all three items and is entitled to their full monetary claim of **\$1,022.50** as claimed.

As the landlord’s application was fully successful, I grant the landlord the recovery of the filing fee of **\$50.00**.

I find that the landlord has established a total monetary claim in the amount of **\$1,072.50**, comprised of \$1,022.50 for items 1 to 3, plus the recovery of the \$50.00 filing fee. As the landlord has claimed against the tenants’ security deposit of \$250.00 which

as accrued no interest to date and pursuant to section 72 of the *Act*, I authorize the landlord to retain the tenants' full \$250.00 security deposit in partial satisfaction of the landlord's monetary claim. Given the above, I grant the landlord a monetary order under section 67 for the balance owing by the tenants to the landlord in the amount of **\$822.50**.

### Conclusion

The landlord's application is successful.

The landlord has established a total monetary claim in the amount of \$1,072.50. The landlord has been authorized to retain the tenants' full \$250.00 security deposit in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlord in the amount of \$822.50. If the landlord requires enforcement of the monetary order, the monetary order must first be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 27, 2016

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Residential Tenancy Branch