



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF, MND, MNDC

### Introduction

This hearing was reconvened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on October 15, 2015 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on April 13, 2016 for:

1. A Monetary Order for damages to the unit - Section 55;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlords were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matters

The Tenant states that they were away from home until June 7, 2016 and that although they had received the Landlord’s digital evidence by email on June 3, 2016 they did not have sufficient time to review the materials. Further they were unable to read the c.d. as intended, could not see the first two items on the c.d., and were only able to view small versions of the photos. The Tenant seeks an adjournment to review the materials.

Given that the Tenant did have some opportunity to review the cd I decline to adjourn the hearing. Given that the Tenant was not able to view the first two items, I decline to consider this evidence. It is noted that a review of the cd indicates that none of the items depicted are relevant to any of the claims being made by the Landlord.

The Landlord states that Landlord TL, named as a Respondent by the Tenants, is not a landlord but is the husband of Landlord GL who owns the unit with Landlord BY. The Tenants state that they have only ever dealt with the husband and Landlord GL in relation to the tenancy. The Tenant gave examples of this interaction.

Section 1 of the Act defines “landlord” as including a person who, on behalf of the landlord, performs duties under this Act, the tenancy agreement or a service agreement. Accepting the Tenants’ evidence of interaction with the husband of Landlord GL I find that Landlord TL may be considered a Landlord. However, as Landlord TL is not an owner I decline to include his name on any monetary order.

#### Issue(s) to be Decided

Is the Landlord able to claim against the security deposit?

Are the Tenants entitled to return of the security deposit?

Did the Tenant leave the unit unclean and damaged?

Is the Landlord entitled to costs claimed for the damages to the unit?

#### Background and Evidence

The tenancy started on February 15, 2009 and ended on July 14, 2015. At the outset of the tenancy the Landlord collected \$650.00 as a security deposit. Although the Parties conducted a walkthrough inspection of the unit both at move-in and move-out no condition inspection reports were completed. The Landlord received the Tenants’ forwarding address in September 2015. The Tenants do not dispute the Landlord claim for **\$315.00** for the cost of removing concrete and tile.

The Landlord states that the Tenant left the unit unclean and with damages and claims as follows:

- \$1,012.58 for the cost of replacing the linoleum in the kitchen. The Landlord states that the flooring was left with a large cut and some holes at the doorway that appeared to be scratched from the Tenants' two dogs. The Landlord states that the flooring was new around 2008. The Landlord provides an invoice for the linoleum replacement. No photos were provided of the linoleum. The Tenant states that a cut was in the linoleum from the outset and that this cut remained without growing larger. The Tenant states that the building was very old and that the wall separated also leaving a gap between the wall and the linoleum. The Tenant denies any holes at the end of the tenancy and argues that any damage would be caused by the structural changes and not by the Tenants.
- \$195.30 for the cost of repairing 2 broken window panes in the kitchen. The Landlord provides an invoice for the repairs. The Tenant states that the kitchen window was painted shut at the onset of the tenancy and that when the weather became very hot in the summer the Tenants opened the window by separating the window from the paint and in the process left a hairline crack. The Tenant states that the Landlord was not told of the problem or given an opportunity to repair the window.
- \$203.70 for the cost of cleaning the living room and bedroom carpets. The Landlord states that although the Tenants cleaned the carpet at the end of the tenancy they still were left smelling of dog. The Landlord states that the living room carpet at the outset of the tenancy was about 2 years old and that during the tenancy the Tenants replaced the carpet with their own at no cost to the Landlord but without the Landlord's knowledge. The Landlord provides an invoice for the cleaning. The Tenant states that the original living room carpet

was over 10 years old and was badly stained. The Tenant states that Landlord TL gave the Tenants permission to remove and replace the carpets. The Tenant states that they put in new underlay as well as new carpet in 2012 at no charge to the Landlord. The Tenant states that the dogs were not let into the second bedroom and that the bedroom carpets were also cleaned by the Tenants at move-out. The Landlord states that they know nothing about Landlord TL's agreement for the carpet.

- \$182.23 and \$157.50 for the cost of removing and disposing garbage, drywall and recycling materials. Invoice provided. The Landlord states that the Tenant was in the renovation business and left a large pile of construction debris. The Tenant states that this debris came from the shed that the Tenants tore down with the Landlord's permission. The Tenant states that there had not been any discussion about the disposal of the materials and that the work to tear down the shed was done at no cost to the Landlord.
- \$110.00 as an estimated cost for repairing holes to the doors and walls of the unit. No invoice provided. The Landlord states that three of the doors in the unit were left with scratches apparently left by the dogs. The Landlord states that the doors were sanded and refinished by the Landlord's husband. The Landlord states that a hole was also left in the bathroom wall caused by the Tenant. The Landlord states that this hole was patched and painted by the Landlord. The Tenant states that the hole in the bathroom was caused by the Tenant making emergency repairs to the bathroom when a flood was occurring and the Landlords could not be reached. The Tenant states that the hole was pointed out to the Landlord's husband at move-out and the Landlord told the Tenant not to worry about this patch. The Tenant states that the hole was 8" x 8" and that the Tenant made the hole to stop further damage to the unit. The Tenant states that they were not aware of any damage to the doors.

### Analysis

Section 23 of the Act requires that at the start of a tenancy, a landlord and tenant must together inspect the condition of the rental unit and the Landlord must complete a condition inspection report in accordance with the regulations. Section 24(2) of the Act provides that where a landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. As no move in condition reports was completed I find that the Landlord's right to claim against the security deposit for damages to the unit was extinguished at move-in. As a result the only option available to the Landlord upon receipt of the forwarding address in relation to the security deposit was to return the security deposit. The Landlord was still entitled to make its application to claim against the Tenant for damages to the unit.

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 did not return the security deposit within 15 days receipt of the forwarding address I find that the Landlord must now pay the Tenant double the security deposit plus zero interest in the amount of **\$1,300.00**. As the Tenants' application is successful I find that the Tenant is entitled to recovery of its **\$50.00** filing fee for a total monetary amount of **\$1,350.00**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. 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. Policy Guideline #40 provides that tile has a useful life of 10 years. There is no provision for linoleum.

Given the Tenant's believable evidence of structural change leaving a gap, I find that the Landlord has not substantiated that the Tenant was the only cause of damage to the flooring. Further given the age of the linoleum I find that the Landlord has not substantiated a loss equivalent to cost of new flooring. The Landlord has no photo evidence of holes by the door and the Tenant's evidence that there were no holes is plausible. As a result I find that the Landlord has failed to substantiate on a balance of probabilities that the Tenants caused the damages and loss claimed and I dismiss the claim in relation to the kitchen floor.

Based on the Tenant's evidence that the window was cracked by the Tenants I find that the Landlord has substantiated that the Tenant's caused the damage. Given the invoice for window repair costs I find that the Landlord has substantiated the claim to **\$195.30**.

Accepting the Tenant's evidence that permission was provided to them to install the carpets and given that the Tenants provided the Landlord with a new underlay and carpet at no charge, I find that the Landlord was enriched by this renovation to a far greater extent than the loss it suffered through the cost of re-cleaning the carpets at the end of the tenancy. I find therefore that the Landlord suffered no loss in relation to the carpet and I dismiss the claim for costs to clean the carpet.

I accept the Tenant's credible evidence that the shed was taken down at no cost to the Landlord and with the Landlord's permission. I also accept that the materials left behind and disposed of by the Landlord came from the Landlord's own shed and that there was no agreement in relation to the disposal of those items. As a result I find that the Landlord has not substantiated that the Tenants were responsible for cleaning up these articles and I dismiss the claim for costs of removing garbage, drywall and recycling materials. As the Tenants do not dispute the Landlord's claim for **\$315.00** for the cost of removing concrete and tile, I find that the Landlord has substantiated this monetary amount.

Accepting the evidence that the Tenant cut a hole in the bathroom wall in response to a possible flood and that this occurred when the Landlords could not be reached, I find that the Landlord has not substantiated that the Tenant was negligent or acted to cause any damage to the unit. I therefore dismiss the claim in relation to the bathroom wall. Given the vague response of the Tenant to the state of the doors at the end of the tenancy I find that I prefer the Landlord's evidence that the doors were damaged by dog scratches. I find therefore that the Landlord is entitled to compensation for the work done to repair the doors however as the Landlord provided no breakdown of the labour for the repairs to the door I can only find that the Landlord is entitled to a nominal amount of **\$75.00** for the work done on the doors.

As the Landlord's application has met with partial success I find that the Landlord is entitled to half the \$100.00 filing fee in the amount of \$50.00 for a total monetary amount of **\$635.30** (585.30 + 50.00).

Deducting the Landlord's monetary entitlement of \$635.00 from the Tenants' monetary entitlement of \$1,350.00 leaves **\$715.00** owed by the Landlords to the Tenants.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$715.00**. 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: June 10, 2016

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Residential Tenancy Branch