



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on December 18, 2015. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Are there damages to the unit and if so how much?
2. Is the Landlord entitled to compensation for the damages and if so how much?
3. Is the Landlord entitled to retain the security deposit?

### Background and Evidence

This tenancy started on November 1, 2014 as a fixed term tenancy for one year and then continued on a month to month basis. Rent was \$1,500.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$750.00 at the start of the tenancy. The tenancy ended on December 1, 2015. A move in condition inspection was completed on November 5, 2014 and a move out condition inspection was completed by only the Landlord on December 1, 2015. The Tenant said he went to the unit to do the inspection at 3:00 p.m. on December 1, 2015 but the Landlord did not show up. The Landlord said they messaged the Tenant that they could not be there until 4:00 p.m. on December 1, 2015. The Landlord said they completed the report and then sent a copy of the report to the Tenants within 2 weeks.

The Landlord continued to say that this application is for damage to the rental unit. In the original application the Landlord said there is a claim for a TV mount for \$149.99 but they are not claiming that item now. The Landlord said they are applying for the following:

Light bulbs & wall repair supplies	\$ 85.08
Junk removal	\$ 100.00
Labour to repair walls	\$ 120.00
Replace garage remote	\$ 65.00
Carpet cleaning	\$ 210.00
General cleaning	\$ 170.00
Filing fee for this application	<u>\$ 50.00</u>
 TOTAL	 <u>\$ 800.08</u>

The Landlord said they would be satisfied with retaining the security deposit of \$750.00 as full settlement of the dispute.

The Landlord said that she has provided the move in condition inspection report dated November 5, 2014 and the move out condition inspection report dated December 1, 2015 as well as paid receipts for their claims and photographs to support their application. The Landlord said the rental unit was left in poor condition. The move in condition report indicates the unit was in good to fair condition at the start of the tenancy. The move out condition report and the photographs show the unit to be in a poor state of cleanliness and repair at the end of the tenancy.

The Tenants said they cleaned the unit before they left and the junk in the unit that the Landlord removed was in the unit at the start of the tenancy. Further the Tenants said the carpets were old and stained at the start of the tenancy as indicated on the move in condition inspection report. The Tenants said they do not believe they are responsible for the wall repairs as the move in report shows nail holes in the walls at the start of the tenancy. As well the Tenant said they disagree with the carpet cleaning or general cleaning of the unit because the carpets and the unit was dirty at the start of the tenancy. The Tenants said they did lose the garage remote and they are not disputing that item for \$65.00.

The Tenants said in closing that their photographs show the unit was clean and in as good condition on move out as it was on move in.

The Landlord said in closing that if the unit was in poor condition on move in why did the Tenants move in or why is it not noted on the move in condition inspection report. The Landlord said they just want to recover some of their costs to clean and repair the unit.

### Analysis

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord has provided evidence and testimony that she believes establishes a loss exists and she has verified those losses by providing receipts for the claims that the Landlords have made. The Tenant said that there were damages and cleanliness issues at the start of the tenancy so they are not responsible for some of the Landlord's claims. Specifically the move in condition inspection report indicates the carpets are old and one area the carpets needed cleaning. As well the move in report says there are nail holes in the walls at the start of the tenancy. The Tenants said the carpets and the walls were similar at the end of the tenancy as at the start of the tenancy. Further a tenancy agreement was not submitted to indicate how the carpets and walls were to be dealt with. Consequently as the carpet and wall issues are not clear stated in a tenancy agreement and the condition of the carpets and walls appeared as dirty or damaged at the start of the tenancy; I dismiss the Landlord's claims for wall repair supplies of \$85.08, labour for wall repairs of \$120.00 and for carpet cleaning of \$210.00.

I accept the testimony of the Tenant that they lost the garage remote and they do not dispute the Landlord's claim of \$65.00 to replace it. I award the Landlord \$65.00 to replace the garage remote.

Further after reviewing the photographs submitted by both the Landlord and the Tenants; I accept the Tenants evidence that the common areas of the unit were reasonably clean. I also accept the Landlord's move out condition inspection report that indicates the kitchen appliances were dirty. Consequently, I award the Landlord \$100.00 in cleaning costs.

Further the Landlord gave affirmed testimony that the junk that was removed at the end of the tenancy was left by the Tenants. The Tenants gave affirmed testimony that they removed all their belonging and the Tenants said the junk the Landlord removed was in the unit when the Tenants move in. The move in report does not mention any junk or debris was in the unit at the time of move in; therefore I accept the Landlord testimony and I award the cost of removing items/junk left in the unit at the end of the tenancy in the amount of \$100.00.

As the Landlord has been partially successful in this matter, the Landlord is also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep part of the Tenants' security deposit in payment of the damages. The Landlord is ordered to retain \$315.00 of the security deposit. Further the Landlord is ordered to return \$435.00 of the security deposit to the Tenants forthwith.

Conclusion

The Landlord is ordered to retain \$315.00 of the security deposit.

The Landlord is ordered to return \$435.00 of the security deposit forthwith.

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: July 25, 2016

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Residential Tenancy Branch