



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

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

I accept the Landlord's evidence that the Tenants were served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenants did not participate in the proceedings. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to its monetary claim?

### Background and Evidence

The tenancy started on March 1, 2015 and ended on December 20, 2015. Rent of \$1,050.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$525.00 as a security deposit. The Parties inspected the unit at move in however the Landlord did not complete an inspection report. The Parties did not conduct a move-out inspection. The Tenants provided their forwarding address on December 22, 2015.

The Tenant left the unit unclean and damaged and the Landlord claims as follows:

- \$110.00 for cleaning the unit, estimate but no invoice provided;
- \$156.50 for cleaning the carpet, estimate and invoice provided; and
- \$300.00 to paint the unit that had previously been painted in 2012. The Landlord provides an estimate from a company but did the work itself. The Landlord did not provide an invoice for its labour or material costs.

### Analysis

Section 24 of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete a condition inspection report and give the tenant a copy of it in accordance with the regulations. As the Landlord did not complete a move-in condition report I find that the Landlord's right to claim against the security deposit was extinguished at move-in.

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's right to claim against the security deposit for damages to the unit was extinguished at move-in, the Landlord was required to return the security deposit to the Tenant at the end of the tenancy. The Landlord could still make the application to claim damages. As the Landlord did not return the security deposit to the Tenant, I find that the Landlord must now pay the Tenant **\$1,050.00**.

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. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Based on the Landlord's undisputed evidence I find that the Landlord has substantiated that the Tenant left the unit unclean and with damages. Given the invoices for the costs incurred to clean the rugs, I find that the Landlord has substantiated an entitlement to the original claimed amount of **\$156.50**. Deducting this amount from the amount owed to the Tenant leaves **\$893.50** owed to the Tenants.

As the Landlord only provided an estimate of costs from a professional company and no invoice for the Landlord's own labour, or costs for supplies, I find that the Landlord has not substantiated the amount claimed for painting and I dismiss this claim. As no invoice and only an estimate was provided for the costs to clean the unit I find that the Landlord has not substantiated any costs that were incurred for cleaning and I dismiss this claim.

As the Landlord's application resulted in a loss to the Landlord, I decline to award recovery of the filing fee.

#### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$893.50**. 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: August 2, 2016

