



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GOODRICH REALTY INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, OPB, FF

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession based upon the end of a fixed term tenancy; and, compensation for damage to the rental unit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matter

Although the landlord requested an Order of Possession in filing the application I heard that the tenant had already vacated the rental unit when the landlord. Therefore, I found the landlord did not require an Order of Possession and one is not provided with this decision.

In the details of dispute the landlord requested that I dismiss the tenant's claim for return of the security deposit as the landlord was of the position the tenant had not paid one for the subject tenancy. I determined that the tenant has not filed an Application for Dispute Resolution to seek return of a security deposit for the subject tenancy and there was no such claim before me. Rather, I heard that the tenant had been requesting return of a security deposit from the landlord. The landlord requested that I make a finding that the landlord is not holding a security deposit for the subject tenancy. Since this issue was identified in the details of dispute and both parties had provided written submissions and evidence concerning a security deposit, I was satisfied that both parties were prepared to deal with the issue of payment of a security deposit and I amended the landlord's application to deal with this matter.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit as claimed?
2. Is the landlord holding a security deposit with respect to this tenancy?

### Background and Evidence

The landlord and three co-tenants entered into this tenancy starting December 1, 2014 for a fixed term set to expire November 30, 2015. The tenancy ended and the tenants returned vacant possession of the rental unit on November 30, 2015.

### **Damage claim**

The landlord asserted that a move-in inspection report was prepared but the landlord did not include it in evidence. The tenant could not recall if a move-in inspection report was done and stated that if one was done she did not get a copy of it.

A move-out inspection was conducted on December 3, 2015 and a report was prepared. The report does not meet the form and content requirements of the Residential Tenancy Regulations and provides limited information. Nevertheless, the landlord had reflected wall damage on the report and the tenant indicated she did not agree with the landlord's assessment. The parties also had email exchanges regarding wall damage and the tenant did not agree to compensate the landlord for wall damage. The landlord proceeded to file this Application seeking compensation of \$123.00 for wall damage.

The landlord was of the view that the holes and gouges in the walls at the end of the tenancy were beyond normal wear and tear. The landlord did not present documentary evidence to support the amount claimed. The landlord stated that she received an oral estimate to repair the damage for the amount claimed. The landlord claimed to have had the work done and paid the invoice issued for the repair but the landlord did not submit a copy of the invoice as evidence.

The tenant testified that they had used 3M wall hooks and when they removed the hooks in accordance with the instructions the paint surface came off. The tenant testified that she determined this was likely from the walls being painted with primer or very inexpensive paint. The tenant attributed the holes in the walls to normal wear and tear from hanging pictures and the like.

### **Security Deposit**

The landlord submitted that the tenant did not pay a security deposit for the subject tenancy but has been requesting return of a security deposit.

The tenant submitted that the security deposit was paid upon commencement of the immediately preceding tenancy agreement for the rental unit. I heard undisputed evidence that the previous tenancy agreement was entered into with the former owner of the property and a security deposit was paid to the former owner. The property was sold during the previous tenancy and the security deposit was transferred to the current owner. Upon taking ownership of the property, the current owner enlisted the services of the landlord to act as property manager. The landlord acknowledged that the security deposit paid under the previous tenancy was provided to the landlord during the previous tenancy agreement. The previous tenancy agreement came to an end and was replaced by the subject tenancy agreement on December 1, 2014. The landlord acknowledged that the security deposit paid under the previous tenancy agreement is still held by the landlord but the landlord was of the position that the security deposit paid for the previous tenancy did not transfer to the subject tenancy agreement.

It was undisputed that the tenant was not a named tenant or a signatory to the previous tenancy agreement although she lived in the rental unit. The tenant claims that she paid a part of the security deposit to the former owner even though she was not a signatory to the tenancy agreement. However, the tenant submitted that the landlord's agent, referred to by initials TH, had assured her that the security deposit from the previous tenancy agreement had been transferred to the subject tenancy agreement.

Both parties pointed to the subject tenancy agreement in their submissions to me. It indicates that a security deposit of \$700.00 was paid although the date of payment was left blank. The landlord submitted that it is the landlord's practice to indicate the security deposit is paid, even if it has not been paid, and then record the date on the tenancy agreement when the payment is actually received. The tenant submitted that indicating the security deposit had been paid without a date supported her understanding that the security deposit had been transferred from the previous tenancy agreement.

Both parties pointed to conversations they had with TH during the tenancy with respect to the security deposit; however, TH was not called as a witness and I heard that TH no longer works for the landlord. According to the landlord, she repeatedly asked TH to collect the security deposit from the tenant and that it was not forthcoming. According to the tenant, TH advised her that a forwarding address was received from the previous tenant but that the security deposit was transferred from the previous tenancy agreement to the subject tenancy agreement.

The tenant also pointed to efforts the landlord's office made to collect amounts owed from the tenants during the tenancy. The tenant submitted evidence that efforts were made to collect various amounts from the tenant, including very small amounts, but payment of the security deposit was not requested in those communications. According to the tenant, the lack of collection efforts for the security deposit supported the tenant's understanding that it had been transferred from the previous tenancy agreement. According to the landlord, the person responsible for collections is not licensed, meaning he may collect rent but not security deposits.

Ultimately, the landlord viewed the previous tenancy agreement and the subject tenancy agreement to be separate agreements involving different tenants, although the tenant was an occupant of the rental unit during the previous tenancy, and the security deposit was not transferred and must be treated separate from this tenancy. The landlord stated that that they would deal with the former tenant if she approached them with respect to return of her security deposit even if any applicable time limits have passed.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

### **Damage claim**

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 section 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 whatever was reasonable to minimize the damage or loss.

I was provided disputed evidence as to whether the tenant is responsible for damaging the walls during the tenancy. However, in the absence of a copy of a move-in inspection report and a copy of the invoice paid for the wall repair, I find the landlord has failed to provide sufficient evidence to support the claim against the tenant. Therefore, I dismiss this claim without giving it further consideration.

## **Security Deposit**

The security deposit the landlord is holding in trust was originally paid for a previous tenancy agreement. The tenants named on the previous tenancy agreement are not the same tenants named on the subject tenancy agreement that is before me; however, the tenant before me was an occupant of the rental unit during the previous tenancy and claims to have paid a portion of the security deposit.

I find the landlord's position that the security deposit paid for previous tenancy agreement remains in trust for those tenants named in that agreement and that it did not transfer to a subsequent tenancy agreement with different named tenants to be a reasonable position. However, I find the landlord's practice of indicating a security deposit is paid on a tenancy agreement even when it has not been paid inaccurately reflects the situation and is prone to creating confusion. While the landlord may understand their own practice it is important to consider that a tenancy agreement is relied upon by both parties to the agreement. Accordingly, a tenancy agreement should accurately reflect the terms agreed upon and the facts. I also accept that the landlord's agent TH may have been having different conversations with the landlord and the tenant, further lending to the conflict and confusion regarding status of the security deposit. Also, it would appear that the first written correspondence from the landlord to the tenant concerning non-payment of the security deposit appears to have been made via email in November 2015, the last month of tenancy. I would expect that such communication would have been made sooner than that to avoid this conflict and confusion.

Ultimately, I find it more appropriate to consider the security deposit the landlord is holding to be that of the previous tenancy as I have no evidence to suggest that the previous tenants provided the landlord with written agreement to assign or transfer the security deposit to the subsequent tenancy agreement that names different tenants. Accordingly, I find the landlord is not holding a security deposit for the subject tenancy agreement.

If the tenant did pay a portion of the security deposit during the previous tenancy agreement her remedy would be to pursue the previous tenants in the appropriate forum as the Residential Tenancy Act does not apply to disputes between tenants and occupants or roommates and it would be upon the previous tenants to pursue the landlord for return the security deposit paid for the previous tenancy.

## **Filing fee**

I make no award to the landlord for recovery of the filing fee from the tenant given the landlord's lack of success in establishing a damage claim against the tenant; the landlord applied for and did not require an Order of Possession; the tenant had not filed a claim for return of the security deposit and the landlord's request that I make a finding was done voluntarily. Also of consideration is that I find the practices of the landlord and actions of agent TH likely contributed to the confusion regarding a security deposit.

### Conclusion

The landlord's monetary claim against the tenant has been dismissed. I have found that the landlord is not holding a security deposit for the subject tenancy.

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 12, 2016

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Residential Tenancy Branch