



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDC, FF

This hearing dealt with cross applications. The landlord is seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking the return of double the deposit. Both parties also seek the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### Issue to be Decided

Is either party entitled to a monetary order as claimed?

### Background, Evidence

The landlord's testimony is as follows. The tenancy began on January 1, 2011 and ended on December 15, 2015. The tenants were obligated to pay \$1200.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$550.00 security deposit and a \$550.00 pet deposit. The landlord stated that the unit was fully renovated when the tenant moved in. The landlord stated that the tenant caused water damage to the laminate floor by "probably leaving the balcony door open when it rained and the dogs' water bowl splashing onto the living room floor". The landlord stated that the living room floor was damaged so badly that it had to be replaced.

The landlord stated that the bedroom laminate was replaced as well to keep the aesthetics of the unit consistent. The landlord stated that the tenant refused to sign off at the move out condition inspection report. The landlord stated that the total cost to remove the old laminate, install the new laminate, supplies and labour is \$2677.50. The landlord requests that amount along with the filing fee.

The tenant gave the following testimony. The tenant stated that he disputes the landlords claim. The tenant stated that there was some minor damage to the floor but that was to be expected after five years of living in the unit. The tenant stated that the damage was very minor and should be classified as wear and tear. The tenant stated that he physically moved out of the unit on December 1, 2015 and didn't return to the

unit until December 14, 2015 for the move out condition inspection report. The tenant stated that the landlord had already replaced the floor without his knowledge. The tenant stated that the landlord change the bedroom laminate which wasn't necessary as it was undamaged and in excellent condition.

The tenant stated that the landlord did not provide him an opportunity to mitigate the costs or seek a second quote. The tenant stated that the unit below had some water damage that required the flooring to be replaced. The tenant stated that the landlord decided to install new laminate in in his unit as a matter of convenience as he was already paying to redo the unit below and not out of necessity. The tenant requests the return of double his deposits - \$2200.00.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

### Landlords Claim

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlord has not been successful in his claim for the following reasons; other than the condition inspection report which the tenant disputes, the landlord has not provided sufficient evidence to depict the damage as he claims, such as through pictures or third party testimony. In addition, the landlord did not provide a clear and detailed breakdown of the costs. The landlord provided one invoice but lacked other supporting documentation to arrive at the amount as claimed. Furthermore, the landlord prematurely replaced the floor prior to giving the tenant an opportunity to even see the alleged damage and attempt to mitigate. Also, the landlord changed the bedroom floor

when there was no apparent need to do so. Based on all of the above, and on a balance of probabilities, the landlord has failed to provide sufficient evidence that the tenant caused damage beyond normal wear and tear and I therefore dismiss the landlords' application in its entirety.

### Tenants Claim

The tenant is seeking the return of double his deposits. The landlord gave testimony that he did not have written permission from the tenant to retain the deposits. The landlord gave testimony that he did not have an order from the Branch allowing him to retain the deposits. The landlord acknowledged that he received the tenants forwarding address in writing on December 14, 2015. The landlord did not file for dispute resolution until January 4, 2016.

Section 38 of the Act addresses this issue as follows.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

I find that the landlord is in breach of Section 38 of the Act and that the tenant is entitled to the return of double his security and pet deposit  $\$1100.00 \times 2 = \$2200.00$ .

The tenant is also entitled to the recovery of the \$100.00 filing fee.

### Conclusion

The tenant has established a claim for \$2300.00. I grant the tenant an order under section 67 for the balance due of \$2300.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlords application is dismissed.

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 09, 2016

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Residential Tenancy Branch