



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MND, MNSD, MNDC, FF

### Introduction

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

The Landlord applied on January 15, 2016 for:

1. A Monetary Order for damages to the unit - Section 67.

The Tenant applied on January 22, 2016 for:

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

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

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to return of double the security deposit?

### Background and Evidence

The tenancy started on September 1, 2014 and ended on December 29, 2015. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit. No move-in or move-out inspection was carried out or report completed. The Landlord received the Tenant's forwarding address on December 28, 2015.

The Landlord states that the Tenant left the unit with damages that far exceed the security deposit amount. The Landlord did not provide a monetary worksheet detailing any costs for \$500.00. The Landlord indicates that damages were left to the stairs, carpet, floors and walls and that the Tenant failed to do the garden work. The Landlord provides photos and no invoices for these items. The Landlord states that there was no cost to repair the kitchen cupboard. The Landlord states that the wood stairs were plain wood and that after the tenancy the Landlord carpeted the stairs. The Landlord states that the Tenant left the 5 year old hall carpet with paint stains and that they removed this carpet and replaced it with a new carpet. The Landlord also carpeted the stairs and bedroom for a total cost of around \$650.00. The Landlord states that no repairs were made to the engineered floors that were left gouged. The Landlord states that the Tenant left one wall with a large nail hole and dents on the hallway and

stairwell. The Landlord states that the contractor repaired all the holes and painted the unit for approximately \$200.00.

The Tenant states that a couple of scratches were left on bedroom floor but nothing beyond reasonable wear and tear. The Tenant provides photos. The Tenant states that a small dint was left on the stairwell wall and 1 nail hole was left at the entry but that these were minor and could easily have been filled. The Tenant states that the paint was old and three different colors. The Tenant denies that any damages were left to the stairs, carpet, walls and floors beyond reasonable wear and tear.

The Landlord states that the Tenant left a sink chipped and claims its replacement cost of \$141.08. The Landlord provided a photo and an invoice for this amount. The Landlord states that it is unknown how hold the sink was or if it was original to the building of 50 years. The Tenant states that the sink was chipped at move-in and that the sink was degraded at the faucet area. The Tenant states that the sink was as old as the house and became more chipped during the tenancy from normal wear and tear.

The Landlord states that although the yard was left unkempt at the end of the tenancy the Landlord is not claiming any costs in relation to the yard.

#### 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 move-in inspection and report was completed I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished at move-in. The Landlord had no right therefore to retain the security deposit pending its claims 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's right to claim against the security deposit was extinguished and as the Landlord did not return the security deposit to the Tenant within 15 days of the end of the tenancy I find that the Landlord must now return double the security deposit plus zero interest to the Tenant in the amount of **\$1,000.00**. As the Tenant's application has been successful I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,100.00**.

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 the damage or loss claimed was caused by the actions or neglect of the responding party, 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.

Given the lack of a monetary worksheet or any particulars detailing the costs claimed and considering there are no receipts to support any portion of costs incurred in relation to the stairs, carpet, floors and walls, I find that the Landlord has failed to substantiate any of these costs claimed. Given the Tenant's plausible evidence of pre-existing damage to the sink, given the lack of a move-in report and considering the photos and evidence of age of the sink, I find that the Landlord has not substantiated that the Tenant damaged the sink beyond reasonable wear and tear and I dismiss this claim. In effect the Landlord's application is dismissed in its entirety.

#### Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$1,100.00**. 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: September 08, 2016

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Residential Tenancy Branch