



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LANDMARK REALTY MISSION LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND MNSD FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for damage or loss pursuant to section 67 and to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38 as well as authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:45 pm in order to enable the tenants to connect with this teleconference hearing scheduled for 1:30 pm. The landlord's representative ("the landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord testified that, after an initial personal service in January 2016, the landlord sent each tenant a copy of the landlord's Application for Dispute Resolution ("ADR") on July 20, 2016 by Canada Post registered mail. The landlord provided the receipt and tracking numbers as well as her sworn testimony that the ADR package with Notice of Hearing had been received by each tenant, according to tracking information. I find that the tenants were deemed served July 25, 2016 in accordance with section 89 and 90 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage or loss at the end of the tenancy? Is the landlord entitled to retain the tenants' security deposit towards any monetary award? Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

This tenancy began on October 1, 2014 with a rental amount of \$1050.00 payable on the first of each month. The landlord testified that the landlord continues to retain the \$525.00 security deposit paid by the tenants prior to the outset of the tenancy (September 19, 2014). The landlord testified that the tenants vacated the rental unit on November 30, 2015 returning most of the keys at that time. The landlord testified that the tenants provided a forwarding address on December 18, 2015. On December 30, 2015, the landlord applied to retain the tenants' security deposit towards the cost of the damage to the rental unit (\$698.63).

The landlord testified that the rental unit and residential premises are approximately 8 years old. She testified that a paint touch-up but not a full paint of the unit had been done prior to the tenants' move-in. She submitted a copy of a condition inspection report from move-in. The report indicated that the majority of the rental unit was marked in good condition while some items (black marks on walls and holes on counter as well as stains on the kitchen counter and scuffs on baseboards). On the condition inspection move-in report, it was noted that the landlord would take care of any outstanding cleaning or repairs prior to the tenants' move-in.

The landlord submitted copies of forms requesting to conduct a move-out inspection with the tenants and providing them with opportunities to do so. The landlord testified that the tenants were contacted on several occasions to have an opportunity to attend to conduct a move-out inspection. They did not attend. The landlord also submitted some correspondence between the tenants and the landlord requesting return of their deposit or a portion of their deposit and negotiating any amount to be retained. Ultimately, the tenants and landlord were unable to reach an agreement.

The landlord sought the following amounts in compensation from the tenants,

<b>Item</b>	<b>Amount</b>
Late Rent Pmt Fees (Sept & Oct: \$25 each)	\$50.00
Painting, repairs (cuff repairs)	90.00
Cleaning at the end of tenancy	93.63
Carpet cleaning at end of tenancy	75.00
Replace Visitor Parking Passes	50.00
Move-out fee	50.00

Depreciation of items in home	265.00
Less Security Deposit	-525.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order Sought by Landlord</b>	<b>\$198.63</b>

The landlord provided sworn, undisputed testimony with respect to the monetary order sought. The landlord submitted a copy of the tenancy agreement to show the provision of late fees in the agreement as well as the move-out fee. The landlord testified that the tenant did not return one of the visitor parking passes and another was damaged and unusable therefore the landlord incurred a cost to replace the passes. According to the residential tenancy agreement that cost will be borne by the tenant.

The landlord submitted photographic evidence to show that the unit was left unclean – requiring general cleaning and carpet cleaning in accordance with the tenancy agreement as well as the *Residential Tenancy Act*. The landlord testified that as a result of the damage by the tenants, painting and repairs needed to be done to a number of doors in the residence.

The landlord testified that she believed it was unconscionable to seek the full cost of replacing certain items in the home including the living room floor, baseboard heater and fireplace mantle as well as a refrigerator crisper drawer but that as a result of the tenants' actions, these items were damaged thereby decreasing their value.

### Analysis

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.

The landlord has shown that damage or loss was incurred by submitting both photographic evidence, testimonial evidence and documentary evidence in the form of invoices for damage repair, cleaning and replacement of items in the rental unit. I

accept the landlord's sworn, undisputed testimony and order that the landlord recover as follows,

<b>Item</b>	<b>Amount</b>
Late Rent Pmt Fees (Sept & Oct: \$25 each)	\$50.00
Painting, repairs (scuff repairs)	45.00
Cleaning at the end of tenancy	93.63
Carpet cleaning at end of tenancy	75.00
Replace Visitor Parking Passes	50.00
Move-out fee	50.00
Nominal Amount re: damage to unit	132.50
Less Security Deposit	-525.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order to Landlord</b>	<b>\$21.13</b>

I find that the landlord is entitled to late rent payment fees, move out fee and the replacement cost of visitor's passes. She has shown clear evidence of the costs to the landlord and that those costs are as a result of the tenants' actions and in contravention of the residential tenancy agreement.

I find that the landlord is entitled to 50% of the painting costs. While the landlord was able to show the responsibility of the tenants for damage requiring paint over the course of the tenancy, I note that the tenants moved in to a unit that had not had fresh paint and likely the unit is due to be painted in accordance with the Residential Tenancy Policy Guideline No. 40 regarding useful life of residential tenancy elements (paint approximately every 4 years).

I find that the landlord has provided photographic evidence to show that the unit was unclean and not tidy at the end of the tenancy. Therefore, I find that the tenants were in contravention of section 37 of the Act (tenants to leave unit clean and tidy). The landlord is entitled to recover the cost of cleaning the unit and carpet cleaning.

The landlord is not entitled to "depreciation" per se however I note that the landlord submitted compelling reasons to award an amount (50% of the original amount requested) in a nominal damage award for damage to the unit that the landlord chose not to repair. The landlord argued that the landlord has lost some value in the home and at some point, sooner than original necessary items including the fireplace mantle will

be replaced or repaired. The landlord did not seek the whole cost of repair or replacement. The landlord sought to recover a portion of the eventual cost of repairs or replacement that will likely be accelerated by the tenants' actions or neglect. Therefore, I find the landlord is entitled to a nominal amount of \$132.50 for the repairs to be done in the future.

Pursuant to section 72(2), I find that the landlord is entitled to retain the tenants' entire security deposit towards the damages and costs incurred with any interest payable for this period. There is no interest payable for this period.

As the landlord was successful in their application, they are entitled to recover the \$50.00 filing fee for this application.

### Conclusion

I allow the landlord to retain the tenants' entire security deposit in the amount of \$525.00 towards the monetary amount owed.

I grant the landlord a monetary order in the amount of \$21.13.

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 9, 2016

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Residential Tenancy Branch