



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KENSON REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPB, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for breach of an agreement, pursuant to section 55;
- authorization to retain a portion of the tenants' security deposit in full satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent, SW ("landlord"), and the two tenants, male and female (collectively "tenants"), attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he is the rental agent for the landlord company named in this application and that he had authority to speak on its behalf at this hearing. This hearing lasted approximately 49 minutes in order to allow both parties to fully present their submissions.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the tenants were duly served with the landlord's Application.

The landlord confirmed receipt of the tenants' photographs, which the tenants said were sent by email. Although the landlord was not served in accordance with section 88 of the *Act*, since email is not a permissible method, I find that the landlord was sufficiently served with the tenants' photographs, as per section 71(2)(c) of the *Act*, as he agreed that he received and reviewed the evidence.

At the outset of the hearing, the landlord confirmed that he did not require an order of possession because the tenants had already vacated the rental unit. Accordingly, this portion of the landlord's application is dismissed without leave to reapply.

Pursuant to section 64(3)(c) of the *Act*, I amended the landlord's application to include the female tenant's married name in the style of cause on the front page of this decision and the monetary order, as she consented to this amendment request by the landlord. The female tenant confirmed that she had applied for a name change as per her marriage license but she had not yet received it back, so she was unsure whether her name had been legally changed by the date of this hearing.

### Issues to be Decided

Is the landlord entitled to retain a portion of the tenants' security deposit in full satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this Application from the tenants?

### Background and Evidence

Both parties agreed that this tenancy began on January 1, 2015 and ended on December 31, 2015, as per the fixed term tenancy agreement. Monthly rent in the amount of \$1,575.00 was payable on the first day of each month. A security deposit of \$787.50 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was provided for this hearing. The rental unit is a one-bedroom, one-bathroom condominium.

Both parties agreed that move-in and move-out condition inspection reports were completed for this tenancy. Both parties agreed that the tenants provided a written forwarding address to the landlord on the move-out condition inspection report on December 31, 2015. The landlord stated that he did not have written permission from the tenants to retain any amount from their security deposit. The landlord confirmed that this Application was filed on January 15, 2016.

The landlord seeks \$74.00 for steam cleaning the carpet at the rental unit after the tenants vacated, which the tenants agreed to pay. The landlord also seeks \$500.00 to fix or replace the laminate flooring in the rental unit, which he says was damaged by the tenants. The landlord said that the unit was built sometime in 2014 and that it was brand new and had never been lived in, when the tenants moved in. The landlord said that there is no notation about the flooring in the move-in condition inspection report and that the unit was noted as "brand new" on the report, so there were no scratches when the tenants moved in. The landlord provided coloured photographs of the scratches. The landlord said that the scratches are noted in the living room section of the move-out

condition inspection report, and the tenants signed the report, agreeing to this statement.

The tenants dispute the landlord's claim of \$500.00 for the flooring. The tenants said that they did not cause all of the scratches in the landlord's photographs. Both parties agreed that the landlord showed the unit to potential tenants after they vacated on December 31, 2016, until the new tenants moved in on January 24, 2016. The tenants stated that other people walking through the apartment could have caused the scratches. The tenants questioned why the landlord did not submit photographs taken on December 31, 2015, during the move-out condition inspection, but rather submitted photographs taken weeks later on January 15, 2016, during the time that the landlord was showing the unit to other tenants. The tenants noted that they did cause some minor scuffs in the flooring, which should be considered reasonable wear and tear. They maintained that no proper floor inspection was completed when they moved in but the landlord's agent, a person who was not present at this hearing, was on his hands and knees during the move-out inspection, observing the scuffs in the flooring.

### Analysis

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. To prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Residential Tenancy Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$74.00 for the steam cleaning of the carpet, as the tenants agreed to pay this amount during the hearing.

I dismiss the landlord's claim for \$500.00 to fix and replace the flooring at the rental unit, without leave to reapply. The landlord failed to meet part 3 of the above test. The landlord did not provide any receipts, invoices or estimates to show how the above amount was arrived at. The landlord said that the owner "suggested" the above amount and the landlord had estimates in front of him during the hearing, but he did not submit

them for this hearing. The landlord said that the repair or replacement work has not been done and that the landlord will “renovate” the rental unit after the new tenants vacate on January 31, 2017.

Although the landlord stated that the tenants agreed to “scratches on floor” in the living room on the move-out condition inspection report, I do not find that the landlord is entitled to any nominal damages for the scratches.

Residential Tenancy Policy Guideline 1 states “reasonable wear and tear” is “natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.” I find that the floor scratches are reasonable wear and tear and are so minor and microscopic, that the landlord had to put his own business card next to the scratches on the flooring in order to show the size and location of the scratches in the photographs taken on January 15, 2016, more than two weeks after the tenants moved out. The landlord said that he did not submit the photographs taken on the day of the move-out condition inspection on December 31, 2015, because his business card was not in those photographs to show their location and size. Numerous visitors attended at the rental unit after the tenants moved out and these visitors could have caused the scratches as shown in the landlord’s photographs. The landlord was unable to state how many scratches the tenants caused or how significant the scratches were.

As the landlord was mainly unsuccessful in this Application, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenants.

The landlord continues to hold the tenants’ security deposit of \$787.50. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$74.00 from the tenants’ security deposit in full satisfaction of the monetary award made at this hearing. I order the landlord to return the remainder of the deposit in the amount of \$713.50 to the tenants.

### Conclusion

I order the landlord to return the remainder of the tenants’ security deposit of \$713.50 to the tenants.

I issue a monetary order in the tenants’ favour in the amount of \$713.50 against the landlord and the landlord must be served with this Order as soon as possible. Should

the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application for an order of possession and to recover the filing fee is dismissed without leave to reapply.

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 02, 2016

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Residential Tenancy Branch