



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Codes: MNDC, MNSD, FF

### Introduction

This hearing was convened in response to applications filed by the landlords and the tenant.

The landlords' application is seeking orders as follows:

1. For a monetary order for damages to the unit;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. For a monetary order for money owed or compensation under the Act;
2. Return all or part of the double the security deposit; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Procedural issue

All evidence for the landlord was provided through their interpreter.

Issues to be Decided

Are the landlords entitled to monetary compensation for damages?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

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

Background and Evidence

The tenancy began on June 15, 2014. Rent in the amount of \$2,000.00 was payable each month. A security deposit of \$975.00 was paid by the tenant. The tenancy ended on December 15, 2015.

The parties agreed a move-in and move-out condition inspection report was completed. Filed in evidence is a copy of the report.

Landlords' application

The landlords claim as follows:

a.	Plastic left in cardboard	\$ 100.00
b.	Damages	\$ 6,499.50
c.	Loss of rental income for 8 months	\$16,000.00
d.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$22,599.50</b>

Plastic left in cardboard

The landlord testified that the tenant left plastic in cardboard and it is a violation of the strata rules and fines apply. The landlord seeks the amount of \$100.00.

The tenant testified that the fine for such a violation is \$10.00. The tenant stated that the strata rescinded the \$10.00 fee and gave them a warning.

Damages

The landlord testified that the tenant caused damage to the rental unit. The landlord stated that there were damages to the kitchen granite counter, damage to the laminate floor, the stove was left dirty and the whole house needed to be cleaned including the

carpets. Filed in evidence are photographs. Filed in evidence is an estimate for the repairs.

The tenant testified that the rental unit was left clean and undamaged. The tenant stated that the landlords were at the rental unit at the time the move-out condition inspection was being completed by their property manager. The tenant stated that the move-out condition inspection report shows that they left the rental unit clean and undamaged.

The tenant testified that the chip in the kitchen counter was pre-existing and the landlord's agent was notified on July 2, 2014. The tenant indicated that the landlord's agent confirmed in an email dated December 16, 2015 that the chip was pre-existing.

The tenant testified that the process was explained to the landlords by their property manager; however, the landlords expectations were unreasonable. The tenant stated they took their own pictures of the rental unit at that the end of the tenancy. Filed in evidence are photographs.

#### Loss of rental income for 8 months

The landlord testified that they did not rent the premise because they were waiting for the outcome of the hearing and they cannot rent the unit in the condition it was left in by the tenant.

#### Tenant's application

The tenant claims as follows:

a.	Return of double the security deposit (\$975.00)	\$ 1,950.00
b.	Loss of time and breaches	\$ 3,500.00
	<b>Total claimed</b>	<b>\$ 5,450.00</b>

The tenant testified that they seek to recover double the security deposit, as the landlords did not have the right to claim against the deposit, as their claim was unreasonable.

The tenant testified that because the landlords claim is unreasonable that they should be entitled to recover 3 working days that were affected due to the landlords breach of good faith.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the both parties have the burden of proof to prove their respective claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### Landlords' application

#### Plastic left in cardboard

The evidence of the landlord was that they seek to recover strata fines in the amount of \$100.00. The evidence of the tenant was that the strata fine was \$10.00 for this violation, and that the fine was waived by the strata and they received a warning instead.

I accept the tenant's evidence over the landlord for the following reasons. The landlords provided no evidence as to how they arrived at the amount of \$100.00, when the strata fee was \$10.00 for mixing plastic in with cardboard. I am not satisfied that the tenant incurred any strata fines that equal the amount of \$100.00. Therefore, I dismiss this portion of the landlords' claim.

### Damages

Section 37 of the Act, the tenant is required to return the rental unit to the landlords reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage.

Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

The tenant is not responsible for reasonable wear and tear to the rental unit or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*.

Section 21 of the Act States a condition inspection report completed in accordance with this section is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case, I have reviewed the move-out condition inspection report. The report is evidence of the state of the rental unit at the end of the tenancy. The report condition codes indicated that the rental unit was left in “good” condition by the tenant.

In the comment section of the condition inspection report, section Z, the landlord's agent writes,

“according to owners suite is smelly & dirty and not properly cleaned...”.

[Reproduced as written]

This statement leads me to believe the landlord's agent was not in agreement with the comments of the owner. The tenant disagreed with the comments made in the report.

While the landlords have provided photographs; those photographs have been enlarged to the extent that you can see a strand of hair of the floor.

Further, minor scuff and dents were noted in the move-out condition inspection report. I find these photographs simply confirm the report.

Furthermore, the tenant has provided their own photographs which are not enlarged and show the rental premises at a reasonable distance. I find these photographs show the tenant has met or exceeded the requirement of section 37 of the Act.

I am also satisfied that the chip in the kitchen countertop was pre-existing as that was confirmed by the landlords' property manager in an email dated December 16, 2015.

Based on the above, I find the landlords have failed to prove a preponderance amount of evidence to the contrary as required by section 21 of the Act. I find the landlords have failed to prove a violation of the Act, by the tenant. Therefore, I dismiss this portion of the landlords' claim.

#### Loss of rental income for 8 months

In this case, the tenancy ended in accordance with the Act. The landlords are seeking to recover 8 months of loss rent, due to the condition the rental unit was left in by the tenant. I find the landlords claim unreasonable and not supported by the evidence. The rental unit was not left in a state that left the rental unit un-rentable or uninhabitable.

Further, section 7(2) of the Act, states a party who claims compensation for damage or loss that results from the other's non-compliance with the Act, must do whatever is reasonable to mitigate the damage or loss.

I find the landlords actions of simply waiting for this hearing and not making any of the alleged repairs or not renting the unit is a breach of section 7(2) of the Act. I find a party cannot simply do nothing and allow a claim to build, such as the landlords have done in this case.

As I have previously found the tenant has not violated section 37 of the Act. I dismiss the landlords' claim for loss revenue.

Based on the above findings, I dismiss the landlords' application. I find the landlords are not entitled to retain any portion of the tenant's security deposit. I find the landlords are not entitled to recover the filing fee from the tenant.

#### Tenant's application

While I accept the tenant's position that the landlords' claim was unreasonable and not supported by the evidence; however, I find the landlords have complied with section 38 of the Act, by filing their application claiming against the security deposit within 15 days of receiving the tenant's forwarding address. The landlords' had the right under the Act, to have their application heard and a decision made.

Therefore, I find the tenant is not entitled to double the security deposit. Further, I find the tenant is not entitled to compensation for preparing for the hearing as each party is responsible for their own costs when preparing and attending a hearing. Therefore, I dismiss the tenant's application.

As the tenant was not successful with their application for double the security deposit or for monetary compensation under the Act, I find the tenant is not entitled to recover the filing fee from the landlords.

Since I have found that the landlords are not entitled to retain any portion of the tenant's security deposit, **I Order** the landlords to return to the tenant their original security deposit in the amount of **\$975.00**.

Should the landlords fail to comply with my Order, I grant the tenant a monetary order in the amount of **\$975.00**, pursuant to section 67 of the Act. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlords are cautioned** that costs of such enforcement are recoverable from the landlords.

#### Conclusion

The landlords' application is dismissed. The tenant's application for double the security deposit is dismissed.

The tenant is granted a monetary for the return of their original security deposit in the above noted amount.

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 30, 2016

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Residential Tenancy Branch