



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 pursuant to section 67; authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties (a representative for the landlord and the two tenants) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?  
Is the landlord entitled to retain the tenants' security deposit towards any monetary order? Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

This tenancy began on April 1, 2015 as a one year fixed term tenancy. Both parties agreed that a written tenancy agreement was created however neither party submitted a copy of the agreement for this hearing. Both parties agreed that the rental amount of \$1550.00 was payable on the first of each month. The parties also agreed that, when the tenants vacated the rental unit on March 31, 2016, the landlord returned their \$775.00 security deposit but did not return their \$775.00 pet damage deposit.

The landlord described this rental property as a 2 bedroom condominium with 2 bathrooms. She testified that it is approximately 3 years old and 925 square feet in total. She testified that some renovations were done after the first tenants moved out of the unit and before these tenants moved into the rental unit. In providing information about this tenancy, the landlord's agent was not aware of the accurate amounts of the deposits held by the landlord nor was she certain about the dates of the previous tenancy or the details of any renovation work done at the property.

The representative for the landlord ("the landlord") testified that, after the tenants vacated the rental unit, attempts were made to contact the tenants asking them to return to the property to further clean the rental unit. The landlord submitted photographic evidence. The landlord's photographs showed the two tenants standing near a laundry area and another photograph that the landlord claimed showed water damage to the floor in that area of the home. The submitted photographs were black and white and it was difficult to see the condition of the floor. The landlord testified that the laminate flooring was damaged by water, could not be repaired and had to be replaced in its entirety. She submitted a paid invoice in the amount of \$3052.50 detailing the floor replacement.

Tenant HW testified that no move-in inspection report was created by the landlord. He testified that the water damage the landlord refers to appears to be near the washer/dryer area in the rental unit and that the floor is in the same condition it was in at move-in. Tenant HW testified that, at move-out, he contacted the landlord to arrange a condition inspection. He testified that the landlord attended to the rental unit but that no report was completed. He testified that he and the landlord exchanged contact information. He testified that he asked the landlord if there was anything he needed to sign and the landlord responded, no.

Tenant RW testified that there was damage (lifting of pieces of the floor and drag/scratch marks) to the rental unit floor when her and her husband moved into the unit. Tenant RW testified that no condition inspection report was completed at move-in. Both tenants testified that they were not contacted by the landlords to return to complete a report or set a condition inspection date. Both tenants testified that, the day after they vacated the rental unit, the landlord attended to their new residence, provided them with an envelope with a cheque for \$775.00 (the amount of their security deposit). Both tenants testified that the landlord did not explain why their pet damage deposit was not being returned to them.

The landlord's representative testified that a condition inspection report was created and signed by both parties but that it has been lost by the landlord. She testified that she

attempted to contact the tenants after they vacated the rental unit to clean and discuss the flooring issue but that they could not be reached. She claims that the damage to the floor is as a result of the tenants' dog and that they should be responsible for a portion of the cost of replacing the floor.

The landlords submitted a letter dated April 26, 2016 from the floor installation company that indicates; the floor could not be repaired - it had to be replaced; there was water damage to the floor; the damage was extensive due to the open floor plan at the rental unit.

### Analysis

Section 35 of the Act provides that a landlords and tenants must inspect the condition of a rental unit before the start of each new tenancy. At the conclusion of a tenancy, there should be a report that reflects the condition of the unit at the start of the tenancy and at the end of the tenancy. Both parties must sign the report and the landlord must provide the tenant with a copy of the report. At the end of the tenancy, the landlord must provide at least 2 opportunities for the tenants to attend for a move-out condition inspection. If a landlord does not comply with the Act by failing to provide at least 2 opportunities for the tenant to attend for a condition inspection or does not provide the tenants with a copy of the report, the landlord's right to claim against a security or pet damage deposit is extinguished.

Section 21 of the Residential Tenancy Regulations provides that, in dispute resolution proceedings, a condition inspect report is the best evidence of the condition of the rental unit at the start and the end of the tenancy unless a party has substantial evidence to the contrary. In this case, the landlord claims that a move-in and move-out condition inspection report was created but that the landlord has lost the report. The tenants claim that no report was created at the start or end of this tenancy. Whether I accept the evidence of the tenants or the landlord, there is no condition inspection report available for my consideration.

Subject to the condition inspection report provisions of the Act, the landlords are responsible to ensure that the condition inspection report is created and provided to the tenant. The landlord is responsible to provide opportunities for inspection to the tenants at the end of the tenancy. The landlord must meet these responsibilities in order to claim damages to the property. In this case, there is no condition inspection report upon which to rely. There is insufficient evidence to show that the tenants were given two opportunities to conduct a condition inspection.

In all of the circumstances, I find that the landlord's right to make a claim against the tenants' security and/or pet damage deposit is extinguished. Further, I find that the landlord have provided insufficient evidence to show that there was no damage to the floor prior to the start of the tenancy, that damage existed after the start of the tenancy, and that the damage required replacement of the entire laminate floor. Finally, I find that the landlord have provided insufficient evidence to show that the tenants are responsible for the damage to the floor.

Given that I find the landlord has not met the burden of proof in making a monetary claim against the tenants with respect to damage to the rental unit, I find that the landlord's application should be dismissed.

### Conclusion

I dismiss the landlord's application to retain the tenants' security or pet damage deposit. I dismiss the landlord's application to obtain a monetary order based on damage to the rental unit.

I dismiss the landlord's application to recover the filing fee for this application.

I dismiss all aspects of the landlord's application without leave to reapply.

I order that the landlord return the deposit in the amount of \$775.00 not yet returned to the tenants.

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: October 06, 2016

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Residential Tenancy Branch