



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNSD, MND, MNDC, FF*

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of repair to the shower enclosure wall and for the filing fee. The landlord also applied to retain the security deposit in satisfaction of her claim.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### **Issues to be decided**

Has the landlord established a claim against the security deposit and if so in what amount? Is the landlord entitled to the recovery of the filing fee?

### **Background and Evidence**

The tenancy started on March 01, 2015 and ended on February 29, 2016. The monthly rent was \$1,380.00. Prior to moving in, the tenant paid a security deposit of \$690.00. On February 28, 2015, a move in inspection was carried out and a report was filed into evidence.

On February 29, 2016, the tenant returned the key to the landlord and moved out. The landlord stated that on that day, the tenant was supposed to move out by noon but actually did so around 3:00pm that afternoon. The landlord stated that sometime in the afternoon, she arrived at the unit along with her daughter and the new tenants who were due to move in the next day on March 01, 2016.

The landlord stated that she had verbally asked the tenant to carry out a move out inspection. However even though both parties were present in the rental unit on the day of move out and the tenant handed over the key to the landlord, a formal inspection was not carried out and the move out inspection report was not created.

The landlord stated that while she was showing the new tenants around she noticed that there was a crack in the plexi glass shower enclosure wall.

At this point the parties offered contradictory evidence. The tenant stated that he handed over the keys to the landlord and left the unit. The tenant stated that the landlord did not mention the damage to the plexi glass. The tenant acknowledged that the damage existed but stated that it existed at the start of tenancy when the bathroom was in the process of being restored, after some event that caused extensive damage.

The landlord stated that she spoke with the tenant as he was leaving and informed him about the damage. The landlord's daughter stated that a text message was sent to the tenant that afternoon.

The tenant stated that at the start of the tenancy, restoration work was carried out to repair damage to the shower stall walls. The tenant filed into evidence a letter from the contractor who did the restoration work. The letter states that the landlord was informed of damage to some pipes, the plexiglass divider and the ceiling in the basement but chose not to restore these items. The tenant stated that he did not report the damaged plexiglass during the tenancy because he believed that the landlord had already been informed by the contractor and had refused to have it repaired or replaced.

The landlord stated that in April 2016 after the tenant moved out, she had the plexiglass removed and replaced with glass. The landlord is claiming the cost of the replacement and has provided invoices and photographs to support her monetary claim.

### **Analysis**

The testimony of the tenant and the landlord is conflicting with regard to the damage to the plexiglass. Both parties agreed that at the start of the tenancy, the bathroom was being restored after some event that caused extensive damage. The tenant filed a letter from the contractor who did the restoration work. The letter states that the landlord was notified of damage to the plexiglass and two other items and decided not to have them restored.

The tenant denied having caused damage to the plexiglass and the landlord testified that the tenant was responsible for the crack in the plexiglass.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The landlord is claiming that the tenant caused damage to the shower enclosure wall while the tenant argues that the damage to the plexiglass wall was caused during the restoration work by the contractor, who was hired by the landlord.

The tenant filed a letter written by the contractor which confirms the tenant's version of events. Therefore I find that on a balance of probabilities, it is more likely than not that the damage was present or created at the time of the restoration and accordingly I find that the tenant is not responsible for the cost of replacing the plexiglass. In addition, the landlord has replaced the plexiglass with glass and has not provided information on the comparative cost of plexiglass versus glass.

A move out inspection was not carried out even though both parties were present inside the unit on the day the tenant moved out. The move out inspection is an opportunity for the tenant and landlord to identify damage and come to an agreement on any deductions that can be made to the security deposit. The inspection should be conducted diligently using a flashlight if necessary as it is the only opportunity to identify damage that the tenant is responsible for.

Based on the documents filed into evidence and the testimony of both parties, I find that the landlord has not proven that the tenant is liable for the damage to the plexiglass. Therefore the landlord's claim for the cost to replace the plexiglass wall is dismissed.

Since the landlord has not been successful in proving her claim, she must bear the cost of filing this application.

I order that the landlord return the security deposit of \$690.00 to the tenant and I grant the tenant an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order in the amount of **\$690.00**.

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 05, 2016

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Residential Tenancy Branch