



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WESTERN RENTAL PROPERTY MANAGEMENT GROUP/COLDWELL  
BANKER PRESTIGE REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FF, MNSD, OLC

### Introduction

This hearing convened as a result of cross applications wherein the parties each sought monetary compensation from the other, Orders relating to the disposition of the Tenants' security deposit and requests to recover the filing fee.

This hearing occurred over two days: October 4, 2016 and December 1, 2016. On the first date set for the hearing, and by Interim Decision dated October 7, 2016, I adjourned the matter to have both applications heard at the same time. When the hearing reconvened on December 1, 2016, only the Landlord's agent called into the hearing. He provided affirmed testimony and was given the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenants were provided with a copy of my Interim Decision and Notice of Adjourned Hearing by letter dated October 11, 2016. This letter provided the Tenants with the date and time of the hearing as well as the codes required to call into the hearing. As the Tenants failed to call into the hearing on December 1, 2016 their Application for Dispute Resolution filed February 19, 2016 is dismissed.

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

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord be authorized to retain the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

### Background and Evidence

This tenancy began October 16, 2014 and ended on January 31, 2016. The Tenants paid the Landlord a security deposit of \$1,475.00 on or about October 16, 2014.

At the end of the tenancy the Landlord returned \$975.00 to the Tenants and retained \$500.00 of the initial security deposit.

By application dated September 12, 2016, the Landlord sought to retain the balance of the security deposit in the amount of \$500.00 towards the cost of repairing and repainting the rental unit.

Introduced in evidence was a copy of an invoice dated April 24, 2016 in the amount of \$3,500.00 for painting of the rental unit. J.Y. confirmed that at first the Landlord retained \$500.00 as this was the amount it cost to patch and repaint the numerous holes left by the Tenants. J.Y. stated that after this attempt it was clear that the paint did not match and full repainting of the unit was required. As such, the Landlord sought further compensation in the amount of \$3,000.00 representing the cost to repaint the unit over and above the \$500.00 retained.

J.Y. further confirmed that the normal rate charged for painting in the city in which the rental unit is located is \$2.00 per square foot; he stated that the rental unit is 2,000 square feet such that he would have expected to be charged \$4,000.00 for painting of the entire rental unit. The invoice indicates that three walls in the main living room were not painted which J.Y. submitted explained why the invoice was \$500.00 less than what he would have expected to paint the entire unit. The invoice also indicates 169 holes were made in the walls.

J.Y. testified that the rental unit was brand new when the Tenants moved in.

Introduced in evidence was a copy of the move in and move out condition inspection report. The move out inspection report confirms that the walls in each room were damaged by holes and on page 3 of this document it is noted that there were 110 holes in the walls.

The Landlord also submitted photos of the walls depicting the numerous holes made by the Tenants.

### Analysis

Based on the above, the Landlord's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

Having failed to attend the hearing on December 1, 2016, the Tenants application is dismissed in its entirety.

Section 7(1) of the Act provides that if a Landlord or Tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party 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.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the Act as follows:

***Leaving the rental unit at the end of a tenancy***

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit 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.

*Residential Tenancy Branch Policy Guideline 1*—provides that a Tenant “must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.”

I find, based on the undisputed evidence before me, that the Tenants made an excessive number of nail holes in the walls of the rental unit requiring repainting of the majority of the rental unit, and that these holes represent damage as contemplated by section 37 of the Act.

I accept the Landlord's evidence that the rental unit was brand new, such that there should be no deduction for the useful building life of the paint. Further, I accept the

Landlord's evidence that the cost to repaint the rental unit was \$3,500.00 and I therefore award the Landlord compensation for this amount.

Having dismissed the Tenants' claim for return of their security deposit, I grant the Landlord's request to retain the balance of the Tenants' security deposit in the amount of \$500.00, and award the Landlord a Monetary Order, pursuant to sections 7, 32, 67 and 72 of the *Residential Tenancy Act*, in the amount of \$3,100.00 representing the balance of the cost to paint the rental unit and recovery of the filing fee.

### Conclusion

The Tenants failed to attend the hearing and their application is dismissed.

The Landlord's claim for compensation for the cost to paint the rental unit is granted. The Landlord is authorized to retain the \$500.00 balance of the Tenants' security deposit and is given formal Monetary Order in the amount of \$3,100.00 representing the balance of the cost to paint and recovery of the filing fee. The Landlord must serve a copy of the Monetary Order on the Tenants as soon as possible. Should the Tenants fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: December 2, 2016

---

Residential Tenancy Branch