



# 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 was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on July 25, 2016. The Landlord filed seeking a \$575.00 Monetary Order for damage to the unit, site, or property; to keep all or part of the security and/or pet deposit; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Tenant confirmed receipt of the application, notice of hearing documents, and evidence served by the Landlord. No issues regarding service or receipt of those documents were raised by the Tenant. As such, I accepted the submissions from the Landlord as evidence for these proceedings.

I heard the Tenant state she faxed some evidence to the Residential Tenancy Branch (RTB) two days before this hearing, on Monday January 23, 2017. The Landlord stated she received the Tenant's evidence via fax on that same date and argued the evidence was not served within the required 7 day period.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenants which states:

- 1. Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

Rule of Procedure 3.15 provides that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. ***In all events***, the respondent's evidence must be received by the

applicant and the Residential Tenancy Branch not less than 7 days before the hearing [my emphasis added by underlining and bold text].

The Tenant had over six months to prepare and serve her response to the Landlord's application. At the time of this hearing the Tenant's evidence had not been placed on the RTB file. When asked why she waited to submit her evidence the Tenant stated that she was in a rural area and could not get into town to fax the evidence sooner; although she had intended on submitting it the previous week. The Tenant then asked if the hearing could be postponed until her evidence was received on file.

After consideration of the foregoing, I found the Tenant had provided insufficient evidence to prove she could not have submitted her evidence within the required timeframes. In addition, I considered that the Landlord had waited almost six months to have her application heard and any further delay would be prejudicial to the Landlord. Accordingly, I declined the Tenant's request and I proceeded with the hearing, in absence of the Tenant's documentary evidence. I then informed the Tenant she was at liberty to submit that evidence orally by reading it during her submissions.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

1. Has the Landlord proven entitlement to monetary compensation for damage to the unit site or property?
2. Has the Landlord extinguished her right to claim against or withhold the security deposit for damages to the rental unit?

#### Background and Evidence

The undisputed evidence was the parties entered into a written fixed term tenancy agreement that commenced on May 1, 2014 and switched to a month to month tenancy after one year. Rent began at \$1,150.00 per month and on April 2, 2014 the Tenant paid \$575.00 as the security deposit. No condition inspection report forms were completed by the Landlord at move in or at move out.

The Landlord submitted she received notice from the Tenant in March 2016 that the Tenant would be ending the tenancy effective the end of May 2016. The Landlord began looking for a new tenant and started to show the rental unit.

I heard the Landlord state she found a new tenant who wanted to move into the rental unit prior to the end of May 2016. She stated she entered into an agreement with the Tenant for her to vacate the unit early and in exchange the Landlord would refund the

Tenant some of her May 2016 rent. The Tenant vacated by May 23, 2016 and the Landlord mailed a cheque to the Tenant of \$342.00 on or around June 15, 2016.

The Landlord testified she was out of town at a family funeral at the end of May 2016 so she had a friend attend the rental unit to let the new tenant move in on May 24, 2016. She stated when she returned in early June 2016 she found there had been damage caused to the walls in the bedroom and the ceiling in the living room. The Landlord asserted the new tenant was new to the Country and only had an air mattress for furniture so she did not cause the damage to the rental unit. She also submitted the Tenant admitted to her that the Tenant's bed caused the wall damage in the bedroom and the Tenant put screws in to the ceiling.

The Landlord stated she did not receive the Tenant's forwarding address in writing until July 18, 2016. She asserted she attempted to resolve the repair issues sooner and once she received the forwarding address she filed her application for Dispute Resolution. The Landlord stated she was seeking to recover the cost of the paint, supplies, and labour paid to repair a portion of the bedroom and the living room ceiling. She noted that the receipt for the painting labour was \$787.50 and she was only seeking \$393.75 to cover the costs of the repairs required due to the damage left by the Tenant.

The Tenant disputed the Landlord's application and asserted the Landlord made no mention of her concerns about damage to the rental unit. She noted then noted how there were no condition inspection report forms completed.

I heard the Tenant state that she did not do any damage to the rental unit and the holes in the ceiling were already there at the start of her tenancy. As the Tenant continued her submissions I heard her state that her bed had made the marks on the wall as displayed in the Landlord's photographic evidence; however, she did not cause the damage shown in the Landlord's picture marked "south facing bedroom wall" as she did not have furniture placed up against that wall. Then the Tenant stated that she had put only two holes in the ceiling and was not responsible for all of the holes that were there.

The Tenant submitted she had left her forwarding address in the rental unit before she moved out. She then sent her forwarding address in writing via registered mail as submitted in the Landlord's evidence.

The Tenant focused her submissions on the fact the Landlord never mention the damages to her prior to her moving out. She also focused on how the Landlord failed to consult her before engaging in the repairs. The Tenant argued that it was not necessary to pay \$375.00 for labour to repair the damage.

The Landlord disputed the Tenant's submissions and noted that the damage in the bedroom was not visible prior to the Tenant moving out because her furniture was still inside the bedroom covering the damaged areas. I heard the Landlord state the repairs required were more involved than just painting which caused her to have to hire someone to do the work, as supported by the invoices submitted in her evidence.

### Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

**Section 7** of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 provides that the party making the claim for damages must satisfy each component of the following: the other party failed to comply with the *Act*, regulation or tenancy agreement; the loss or damage resulted from that non-compliance; the amount or value of that damage or loss; and the applicant acted reasonably to minimize that damage or loss. I concur with this policy and find it is relevant to the Landlord's application for Dispute Resolution.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part 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.

Section 37(2) of the *Act* provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Notwithstanding the Tenant's initial denial of damage being caused to the rental unit during her tenancy, in the Tenant's contradictory testimony, she later confirmed she had made holes in the ceiling and that her bed damaged one wall in the bedroom. As such, I

find the Tenant was in breach of section 37(2) of the *Act*, leaving the rental unit damaged at the end of the tenancy. I further find that breach caused the Landlord to suffer a loss for costs relating to the purchase of paint, supplies, and labor to repair and repaint those sections of the rental unit.

Although the Tenant put a lot of emphasis on the fact the Landlord did not consult her when completing the repairs, there is no provision in the *Act* which requires a Landlord to consult with a Tenant to repair damages after the tenancy has ended. Rather, the *Act* clearly states a tenant must **leave** the rental unit undamaged, which means the Tenant had the right to consult on or conduct the repairs during the tenancy, not after it had ended.

Based on the above, I find the Landlord provided sufficient evidence to prove her claim of \$575.00 for paint, supplies, and labour to repair the rental unit. Accordingly, I grant the claim for damages in the amount of **\$575.00**, pursuant to section 67 of the *Act*.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has partially succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the *Act*.

In response to the Landlord's request to keep the security deposit I first considered Policy Guide 17 which provides, in part, that the Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on a landlord's application to retain all or part of the security deposit.

I then turned to sections 23 and 35 of the *Act* which stipulate that the landlord and tenant together must inspect the condition of the rental unit at the beginning and end of the tenancy. There was no dispute that the Landlord failed to comply with sections 23 or 35 of the *Act*, as no condition inspection report forms were completed.

When a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished, pursuant to sections 24 and 36 of the *Act*. Because the Landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, she lost her right to retain or claim the security deposit for damage to the property.

The Landlord was therefore required to return the security deposit to the Tenant, in full, within 15 days of the later of the two of the tenancy ending and having received the Tenant's forwarding address in writing. The Landlord received the Tenant's forwarding address on July 18, 2016 but did not return the security deposit within 15 days of that date.

Because the Landlord's right to claim against the security deposit for damage to the property was extinguished, and she failed to return the Tenant's security deposit within 15 days of having received his forwarding address, section 38(6) of the Act requires that the Landlord pay the tenant double the amount of the security deposit of **\$1,150.00** (2 x \$575.00).

Based on the above, I find the Landlord's monetary award meets the criteria under section 72(2)(b) of the *Act* to be offset against double the Tenant's security deposit which leaves a balance owed to the Tenant of (\$575.00 + \$100.00 - \$1,150.00) **\$475.00**.

The Landlord is hereby ordered to pay the Tenant the sum of **\$475.00** forthwith.

In the event the Landlord does not comply with the above Order, the Tenant has been issued a Monetary Order for **\$475.00**. This Order must be served upon the Landlord and may be enforced through Small Claims Court.

#### Conclusion

The Landlord was partially successful with her application and was granted an award of \$675.00 which was offset double the security deposit leaving a balance payable to the Tenant of \$475.00.

This decision is final, legally binding, 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: January 27, 2017

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Residential Tenancy Branch