



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNSD MNDC FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on August 9, 2016. The Landlord filed seeking an \$800.00 Monetary Order for: damage to the unit site or property; unpaid rent or utilities; to keep all or part of the security and/or pet deposit; for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and two Tenants. 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.

Each Tenant confirmed receipt of the application, notice of hearing documents, and the evidence served by the Landlord which consisted of only the condition inspection report form. No issues regarding service or receipt of those documents were raised by either Tenant. The Tenants did not submit documentary evidence in response to this application. As such, I accepted the submissions from the Landlord as evidence for these proceeding.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant 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?
- 2) How should the security and utility deposits be disbursed?

### Background and Evidence

The undisputed evidence was the parties entered into a one year written fixed term tenancy agreement which commenced in August 2015. The Tenants were required to

pay rent of \$1,500.00 plus utilities. In August 2015 the Tenants paid \$750.00 as the security deposit plus \$300.00 as a utility deposit.

The male Tenant served the Landlord written notice to end the tenancy effective July 31, 2016. The male Tenant provided his forwarding address in writing on the condition inspection report form on August 1, 2016.

I heard the Landlord initially state that A.G. attended the move in inspection and signed the condition inspection report form and no one was in attendance at the move out inspection. Upon review of the condition inspection report form I asked the Landlord who signed the move out section and he responded that it was the male Tenant, K.H. I then asked if K.H. attended the move out inspection and the Landlord stated K.H. was present.

The Landlord testified he was seeking \$800.00 for damage to the walls; for new paint; and because there was a coffee stain on the desk that was brand new. I heard the Landlord state he wrote the cost of \$800.00 on the move out condition inspection report form because he knew that it previously cost him \$600.00 to have the rental unit painted.

The Landlord stated he did not submit receipts into evidence and he could not testify to the actual date when the repairs were completed. He argued the walls had new paint at the beginning of the tenancy and scratches were noted on the condition inspection report form.

The Tenants disputed all claims made by the Landlord and stated the Landlord told them he paints the rental unit every year regardless of damage. They asserted the walls were not properly primed and did not have a second coat of paint on them so they marked easily. They noted that the Landlord had stored the cans of paint in the shared laundry room and he could have painted the walls himself without a \$600.00 charge.

I heard the Tenants state they were of the opinion the marks were normal wear and tear. When asked to describe those marks the Tenants stated they were dark scuff marks caused by things rubbing on the wall that were sitting on their desk. He confirmed there had been cup mark on the desk but that he considered that normal wear and tear and would not be \$200.00.

The male Tenant testified he was present at the move out inspection and that he told the Landlord he did not agree to what was being written on the move out condition

inspection report form. He stated the Landlord told him from the start that he was charging them \$800.00, to which the Tenant disagreed.

The male Tenant stated that when he told the Landlord he was disagreeing with the move out report the Landlord refused to let him sign the report so he left. The Tenant said he contacted the Landlord a few days later and insisted that he be allowed to return and sign the report. The Tenant stated he returned and wrote his disagreement on the condition inspection report form and then signed it. The Tenant noted that the Landlord only claimed \$800.00 and refused to return the balance of their deposits as the utilities had been paid in full.

The Landlord denied that he refused to allow the Tenant to sign the condition inspection report form. He then confirmed that the Tenant returned a few days later and wrote his disagreement on the form and signed it. The Landlord confirmed the utilities had been paid in full and that he was still holding the \$750.00 security deposit and the \$300.00 utility deposit.

After the hearing had been concluded the Landlord interjected that he wanted to seek compensation for loss of rent. He argued the Tenants moved out prior to the end of the fixed term. Upon review of the Landlord's application for Dispute Resolution the Landlord sought only \$800.00 as compensation. Furthermore, the Landlord wrote the following, in part, in the Details of the Dispute:

*...they left the unit with dirty and stained every where, the desk is damaged by hot water, the wall had bicycle tire mark, the bathroom and the kitchen is mass, I need to re-paint 50% of the wall. One key haven't return until now. The tenancy ended by July 30, 2016 and they moved out after 18:30 on July, 2016 with the futon left behind...*

### 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.

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 [my emphasis added with bold text].

The burden of proof is based on the balance of probabilities. It is important to note that 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. In this case, the Landlord has the burden to prove he is entitled to monetary compensation.

In determining the Landlord's application for \$800.00 and the request for unpaid or loss of rent, I find the Landlord has submitted insufficient evidence to meet the burden of proof. The Landlord relied on the condition inspection report form and his oral testimony to support his application; however, both were disputed by the Tenants.

In addition, the Landlord provided contradictory testimonies which lead me to favour the Tenants' submissions. Furthermore, in absence additional evidence such as the tenancy agreement; photographic evidence of the rental unit displaying the condition at the beginning and end of the tenancy; and in absence of receipts showing the actual cost and date when paint had been purchased and if someone was paid to paint the unit after the end of this tenancy; I conclude the Landlord has not met the burden of proof to be awarded compensation for damage or loss of rent. Accordingly, the application is dismissed in its entirety.

The Landlord was not successful with his application; therefore, I declined to award recovery of the filing fee.

Residential Tenancy Policy Guideline 17 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. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Because the Landlord's application was dismissed, the Landlord is not entitled to retain any portion of the \$750.00 security deposit or the \$300.00 utility deposit. As such, the Landlord is hereby ordered to pay the Tenants the sum of **\$1,050.00** (\$750.00 + \$300.00) forthwith.

In the event the Landlord does not comply with the above Order, the Tenants have been issued a Monetary Order for **\$1,050.00**. This Order must be served upon the Landlord and may be enforced through Small Claims Court.

Conclusion

The Landlord was not successful with his application and was ordered to return the security and utility deposits to the Tenants forthwith.

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: February 08, 2017

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Residential Tenancy Branch