



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF; MNSD

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's 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 tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

The landlords and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### Preliminary Issue – Previous Decision

A previous Decision made through an ex-parte proceeding, was rendered on August 23, 2016 regarding this tenancy. The file number has been included on the front page of this Decision for ease of reference. The Adjudicator found, based on the evidence presented that rent was not paid within five days of receipt of the 10 Day Notice. The

Adjudicator therefore issued a two day order of possession and monetary order in the amount of \$800.00 for unpaid August rent.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Are the landlords authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested? If not, is the tenant authorized to obtain a return of all or a portion of the security deposit?

Are the landlords entitled to recover the filing fee for their application?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on August 1, 2015 on a month-to-month basis. Rent in the amount of \$800.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$400.00 at the start of the tenancy. The landlords confirmed receipt of the tenant's forwarding address in writing, on August 30, 2016. The tenant vacated the rental unit on August 28, 2016.

The parties confirmed that condition inspection reports were conducted at move-in and move-out.

The landlords applied for a monetary order in the amount of \$1,595.00. The landlords seek to recover cleaning costs in the amount of \$262.50, the replacement cost of two barstools in the amount of \$505.66, the replacement cost of two doorknobs in the amount of \$26.87 and loss of September rent in the amount of \$800.00. During the hearing, the landlords acknowledged that they placed the unit for sale on an undisclosed date and that the unit remains vacant to date. The landlords provided a copy of the tenancy agreement, copies of the inspection reports, photographs of the unit, a cleaning receipt and an excerpt from a website indicating the price of a specific style of barstool.

In reply, the tenant contends that the unit was left clean, the bar stools were disposed of because the tenant did not know they were provided by the landlord as they appeared in her unit sometime during her tenancy, the door knobs were changed however the original door knobs were left in the unit and because she vacated August 28, 2016 she

is not responsible for September rent. The tenant provided photographs of the unit and two witness statements.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

In this case, the onus is on the applicant to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the respondent in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

### *Cleaning*

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

Upon review of the photographs and testimony of the parties I am satisfied that the tenant left the rental unit contrary to section 37(2) of the *Act*. The tenant's photographs show a general overview of each room whereas the landlords' photographs show close ups of dirty floors, kitchen cabinets, kitchen sink, stove, fridge, tub, toilet and bathroom counter. I find the landlords are entitled to recover the cleaning costs in the submitted amount of \$262.50.

### *Barstools*

Pursuant to section 13 of the *Act*, a tenancy agreement must include which services and facilities are included in rent. Under subsection 20(1) of the *Regulation* any furniture provided for the exclusive use of the tenant, must be included in the completed condition inspection report with a description of the condition of the furniture.

In the absence of the inclusion of furniture, particularly any barstools on the tenancy agreement or move-in condition inspection report, I find the landlords failed to prove the loss of the barstools occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement. This portion of the landlords' monetary claim is dismissed without leave to reapply.

### *Doorknobs*

*Residential Tenancy Policy Guideline #1 ("RT Policy Guideline")* establishes that any changes to the rental unit not consented to by the landlord must be returned to the original condition. If the tenant does not return the rental unit to its original condition before vacating, the landlord may claim costs to return the unit to its original condition or for the value of the loss.

Based on the above *RT Policy Guideline* and the tenant's admission that she removed the original door knobs and did not re-install the original door knobs at the end of tenancy, I find the landlord is entitled to the monetary value of the original purchase in the amount of \$26.87.

### *Rent*

*RT Policy Guideline #3* indicates that a landlord who gives notice to end tenancy for non-payment of rent may recover any loss of rent suffered the next month as long as the landlord can show how they mitigated the loss. I find the landlords failed to provide sufficient evidence of their efforts to re-rent and further find that placing the property on the market for sale does not constitute mitigation. I dismiss the landlords' monetary claim for loss of rent.

As the landlords were partially successful in this application, I find that the landlords are entitled to recover \$50.00 of the \$100.00 filing fee paid for the application. In total, I find the landlords are entitled to \$339.37 in compensation.

### *Security Deposit*

The landlords have established a damage claim therefore in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$339.37 of the \$400.00 security deposit in full satisfaction of the monetary award. The tenant is entitled to the remaining \$60.63 security deposit balance.

Conclusion

The landlord is entitled to \$339.37 in damages. I order the landlord to retain \$339.37 from the security deposit in full compensation of this amount. The tenant is entitled to the return of the balance of the security deposit. I therefore grant the tenant a monetary order for the balance of the deposit, in the amount of \$60.63.

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: March 15, 2017

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Residential Tenancy Branch