



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, MNSD, MND, MNDC, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on August 26, 2016 for:

1. An Order for the Landlord’s compliance - Section 62;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on January 23, 2017 for:

1. A Monetary Order for damages to the unit - Section 67
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Are the Landlords required to pay the Tenants double the security deposit?

Are the Tenants entitled to recovery of their filing fee?

Have the Landlords established the repairs and the costs claimed?

Are the Landlords entitled to recovery of their filing fee?

### Background and Evidence

The following are undisputed facts: There is a written tenancy agreement. The tenancy started on September 1, 2014 for a fixed term to end August 31, 2016 after which the tenancy would convert to a month to month tenancy. The Parties mutually agreed to end the tenancy for July 1, 2016 and subsequently amended the agreement to end the tenancy on July 22, 2016. The Tenants moved out of the unit on that date. Rent of \$2,665.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,300.00 as a security deposit. No move-in inspection was conducted. The Landlord did not complete a move-out inspection report. The Tenant provided its forwarding address on August 8, 2016. The security deposit has not been returned. The Tenant owes the Landlord **\$187.66** for the replacement costs of keys.

The Tenant claims return of the security deposit.

The Landlord states that the Tenant left the unit unclean and damaged and claims as follows:

- \$72.08 for the cost of supplies to repair the walls, receipt provided dated July 16, 2016;
- \$50.36 for the cost of supplies to paint the walls, receipt provided;
- \$200.00 for the cost of labour to paint the walls, undated estimate provided;
- \$231.00 for the estimated cost of replacing the back storm door;
- \$326.00 for the estimated cost to replace two doors, estimates dated January 2017 provided;
- \$505.40 for the estimated cost to replace turf in the backyard, estimate dated January 2017 provided;
- \$57.23 for the cost of cleaning supplies, receipt provided;
- \$72.00 for the dump fees as the cost of removing garbage;
- \$750.00 for 25 hours to clean the unit, no invoice provided; and
- \$1,619.10 for the estimated cost to replace the deck, estimate dated January 7, 2016.

The Landlord states that the repairs were not done to the doors, turf or deck.

The Tenants state that the unit was sold for demolition and asks why the Landlord would carry out any of the work claimed in the application given this demolition. The Tenants state that the real estate agent informed them when the unit was being viewed that the unit was being purchased for demolition by the purchasers and that the purchasers planned on building a very large house. The Tenant states that the unit is currently vacant and boarded up with a demolition notice. The Tenant agrees that items may have been left in the fridge but not on the counters or in the cupboards as depicted by the Landlord's photos. The Tenant states that although they did leave some articles behind for disposal the Landlords had stored various items of furniture including a freezer in the unit and in the shed that comprised more than left behind by the Tenants. The Tenant states that they had asked to delay their move-out to the end of July 2016 as the home they had purchased was not available for possession until August 1, 2016. The Tenant states that the Landlord told them that the unit was sold with a possession date of August 1, 2016 and that they could only agree to end the tenancy a week earlier. The Tenants state that as a result they had to camp out until they had possession of their purchased home.

The Landlord states that the unit was listed for sale and an offer was accepted in April or May 2016. The Landlord states that the possession date was for some time in September 2016. The Landlord does not agree that the Tenants were told of a possession date of August 1, 2016. The Landlord states that the real estate agent informed the Landlord that the unit needed to be in the same condition as it was when viewed by the purchasers. The Landlord states that as a result they had the walls repaired and painted by the person who provided the undated estimate and that this person was paid cash. The Landlord states that the last time the walls were painted was just prior to the start of the tenancy in May 2015. The Landlord states that he was not told at any time that the unit would be demolished. The Landlord states that they

could not agree to the tenancy ending on July 31, 2016 as they needed time to prepare the unit for the purchaser's possession date.

The Landlord states that it took the Landlord two weeks and 25 hours to clean the unit, including the steam cleaning of the carpets, with multiple trips to the dump. The Landlord states that the hours also included the time spend purchasing supplies and traveling to and from the unit. The Landlord states that the cleaning time included the washing of all walls. The Landlord provided a photo of a wall with a stain. The Landlord states that the time for cleaning was estimated. The Landlord states that they obtained two bins for their own belongings that were disposed as well but that these bins were not used for the Tenants' belongings and that the bins were ultimately filled by the Landlord's own belongings. The Landlord states that he filled his own truck to take two trips to the dump with the Tenant's belongings. The Landlord states that the bins could not be used for the Tenant's garbage as they wanted to keep the garbage separate and because the bins were ultimately filled by the Landlord's own belongings.

### Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Regardless of whether the Landlord's right to claim against the security deposit was extinguished at the outset of the tenancy for not having conducted a move-in inspection with the Tenants, since the Landlord did not make its application within 15 days of receipt of the forwarding address I find that the Landlord must now repay the Tenant double the security deposit plus zero interest of **\$2,600.00**. As the Tenants' claim has been successful I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,700.00**.

Section 37 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. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section includes an obligation on the landlord to take whatever measures are reasonable to reduce the costs being claimed.

The Landlord's evidence of not having any knowledge that the unit would be demolished does not hold a ring of truth. It is clear from the estimates provided to support the claims for the replacement of doors and the turf that the unit was not owned by the Landlord nor was the work completed before the unit was taken over by the purchaser at the time the estimates were obtained. I note that the receipt for paint supplies is dated prior to the end of the tenancy. The Landlord initially gives evidence of multiple trips to the dump and then states that only two trips were made to the dump to dispose of the Tenant's garbage. Only one photo shows a stain on the walls. There is no other evidence of dirty walls. If the Landlord did paint all the walls, one wonders why all the walls would require washing. There was no evidence that all the walls were stained in the two year tenancy by such things as smoke or oil that might require removal before painting. The evidence of washing all the walls does not sound at all credible or realistic.

While I can accept that the Tenants did not leave the unit as clean as would be required and did leave some articles for disposal, given the above inconsistencies and the inclusion of claims for repairs that were never done or intended to be done, I find that the Landlord's evidence is over all not reliable or credible and I am not persuaded on a balance of probabilities that the Landlord carried out or paid for any of the claimed repairs and cleaning. I am more persuaded that the claims made by the Landlord were manufactured to respond to the Tenants' claim for return of the security deposit. I therefore dismiss the entire application of the Landlord except for the undisputed costs of the keys for **\$187.66**. As the Tenants had previously agreed to pay this amount to

the Landlord and as the application otherwise had no merit I decline to award recovery of the filing fee.

Deducting the Landlords entitlement of **\$187.66** from the Tenant's entitlement of **\$2,700.00** leaves **\$2,512.34** owed to the Tenants.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,512.34**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This matter is adjourned. This interim decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 4, 2017

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Residential Tenancy Branch