



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MND, MNSD, FF

### Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain a portion of the tenant's security deposit in full satisfaction of the monetary award, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent MS ("landlord") 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. The landlord confirmed that she was the property manager for the landlord named in this application and that she had authority to speak on his behalf as an agent at this hearing. "Witness CA," who is the tenant's wife, testified on behalf of the tenant and both parties had equal opportunities to question the witness. This hearing lasted approximately 93 minutes in order to allow both parties to fully present their submissions.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

### Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain a portion of the tenant's security deposit in full satisfaction of the monetary award?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and witness CA, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 15, 2015 and ended on September 30, 2016. The landlord moved back into the rental unit after the tenant vacated. Monthly rent in the amount of \$6,000.00 was payable on the first day of each month. A security deposit of \$3,000.00 was paid by the tenant and the landlord continues to retain this deposit in full. Both the tenant and witness CA lived in the rental unit together during this tenancy. Both parties signed a written tenancy agreement and a copy was provided for this hearing. Both parties completed move-in and move-out condition inspections and reports for this tenancy. The landlord did not have written permission to keep the tenant's security deposit. The landlord's application was filed on October 12, 2016. The tenant provided a written forwarding address to the landlord on the move-out condition inspection report.

Both parties agreed that the rental unit is a 3,000 square foot, three-level house with three bedrooms and three bathrooms on the top level, one bedroom and one bathroom on the middle level, and two bedrooms (one of the bedrooms is a "media room") and one bathroom on the basement level. The landlord testified that the house was built in 2011 and had original paint, hardwood flooring and carpeting when the tenant lived there. The tenant testified that there is hardwood flooring throughout the house except for the basement level where the two bedrooms have carpeting. The landlord stated that the landlord lived there prior to the tenant, except she does not know for how long and whether there were other tenants living there beforehand as well.

The landlord seeks a monetary order of \$2,160.00 plus the \$100.00 application filing fee.

The landlord seeks \$300.00 for repainting the wall and fixing the hole in the electrical plug outlet of the master bedroom at the rental unit. The landlord said that she did not know whether the above damages had been fixed by the landlord. The tenant agreed to pay \$40.00 to fix the hole, stating that he caused it, he got a quote for \$40.00 to fix it, and he offered to fix it when he vacated but the landlord refused. The landlord agreed to accept \$40.00 for fixing the hole only, not for the wall repair. The tenant disputed the cost for repainting the wall, stating that while he mounted a flat screen television on the wall, he paid a professional \$500.00 to patch and repaint this area. The landlord provided a photograph of the area, which shows a faint circle spot. The landlord did not indicate anything on the move-out condition inspection report under the "walls" section of the "master bedroom."

The landlord seeks \$1,000.00 to repair the hardwood flooring at the rental unit. The landlord stated that she did not know whether the above damages had been fixed by the landlord. The landlord provided two photographs of scratches and gouges in the flooring. The landlord did not label these photographs to indicate where in the rental unit these marks were. The landlord provided a written account indicating that the flooring had entrance scratches, master bedroom

scratches and bedroom “dent” indicating “owner?” in the landlord’s written evidence package. The landlord said that the cost was randomly estimated by the landlord. The tenant was guessing at where the marks were in the rental unit. The tenant indicated that regarding the photograph with the gouges, this damage was already present when he moved into the rental unit, and that throughout the move-in condition inspection report, the landlord indicated “fair” for the flooring. He said that he caused some scratches from a dresser in the other photograph and he was willing to pay \$50.00 for this damage.

The landlord seeks \$100.00 to replace the garbage and green bins at the rental unit. The landlord testified that these bins were missing from the rental unit when the tenant vacated. She stated that she does not know whether the landlord replaced them. She said that the cost was randomly estimated by the landlord. The tenant disputed the cost and said that he did not take the bins when he vacated, he left them in the same place as he did during the tenancy, which is outside behind the garage. He stated that it is possible that someone else might have taken them from the property.

The landlord seeks \$100.00 for a missing light fixture part in the master bathroom. The landlord claimed that the tenant said he would fix this but he did not. The landlord provided a photograph of the entire light fixture, which has two lightbulbs and frosted glass covers, but one frosted glass cover is missing in the photograph. The landlord agreed that the tenant left the frosted glass cover underneath the bathroom sink when he vacated and the landlord had it. But she claimed that there is a missing part which holds the cover in place that the tenant failed to fix. She said that the cost was randomly estimated by the landlord. The tenant and witness CA both testified that they removed the cover because it was dangling and a danger to their small child and that is why they left it under the sink. The tenant disputed the cost and said that he did not take the missing part, it was missing when he moved into the rental unit. He claimed that the landlord indicated that it was “good” upon move-in and move-out in both condition inspection reports.

The landlord seeks \$60.00 for a broken basement bathroom shower hose. She said that the cost was randomly estimated by the landlord and she did not know whether he had fixed it. The landlord provided a photograph of two shower hoses, one that is broken and one that is functioning. She said that the silver metal area was loose in between the green sponge area. The tenant disputed this cost, stated that he did not use the shower at all, since it was in the basement and he used the other showers upstairs instead, and that the shower hose was like that when he moved in. Witness CA stated that she was going to use the basement shower but decided not to because of the shower hose that was already broken.

The landlord seeks \$600.00 for general cleaning of the rental unit. The landlord provided a receipt, dated October 1, 2016, for the above cost indicating “house cleaning” with the rental unit address on it. She claimed that there were no details in the receipt but the landlord did hire someone to clean. The landlord provided photographs of the oven and refrigerator at the rental unit and stated that these areas were particularly dirty when the tenant vacated. She also

stated that the tenant left items behind when he vacated. The tenant and witness CA both testified that they adequately cleaned the rental unit both personally and with hired help for approximately \$200.00 to \$300.00. They stated that it was a huge house so the cleaning was completed over a number of days. They agreed that they mistakenly forgot a minor black mark on the refrigerator and one oven, which they said that they offered to come back and clean but the landlord declined. They both claimed that they were rushed out of the rental unit by the landlord who wanted possession of the house in the morning before the agreed upon vacating time of 1:00 p.m. on September 30, 2016.

### Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must show that the tenant caused damage beyond reasonable wear and tear, satisfying 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 tenant 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 landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$40.00 for fixing the electrical plug hole in the rental unit. The tenant agreed to pay the above cost for fixing the electrical plug hole only, admitting that he caused the hole and agreed to fix it but the landlord refused to allow him to do so. During the hearing, the landlord agreed to accept this cost for the electrical plug hole fixing only.

I dismiss the remainder of the landlord's \$300.00 claim for painting the hole in the wall of the master bedroom, without leave to reapply. The landlord provided a photograph of the repair work by the tenant, which is a very faint circle that is difficult to see. I find that the tenant adequately repaired the area. I also find that the landlord failed part 3 of the above test because he did not provide an invoice, receipt or estimate for the above cost and he chose this number randomly. The landlord also failed to indicate the wall damage in the move-out condition inspection report.

I award the landlord \$50.00 of the \$1,000.00 sought, to fix the scratches in the hardwood flooring. The tenant agreed to pay this amount for the scratches from his dresser and I find that it is a reasonable amount, given that the scratches are minor and mainly reasonable wear and tear. I dismiss the remainder of the landlord's claim for \$950.00 to repair the hardwood flooring

because the tenant disputed the remainder of the cost and the landlord failed part 3 of the above test by failing to provide receipts, invoices or estimates to substantiate the above cost.

I dismiss the landlord's claims for \$100.00 for the garbage and green bins replacement, \$100.00 for the light fixture in the master bathroom, and \$60.00 for the basement bath shower hose, without leave to reapply. The tenant disputed the above costs. The landlord failed part 3 of the above test by failing to provide receipts, invoices or estimates to substantiate the above costs. The landlord picked random numbers to determine what he was entitled to, as per the landlord's evidence at the hearing.

I dismiss the landlord's claim of \$600.00 for general cleaning without leave to reapply. I find that the landlord failed to provide sufficient evidence to show that the tenant failed to properly clean the rental unit when he vacated. The landlord did not submit photographs of the condition of the rental unit when the tenant moved in. The landlord provided a move-in condition inspection report that showed many areas of the rental unit marked as "fair" by the landlord. The landlord's receipt for the cleaning does not provide a breakdown of how many people cleaned, how long it took, how much was charged per person or per hour. The landlord only submitted three photographs after the tenant moved out, which did not show the general condition of the unit when the tenant vacated. It showed the oven and the fridge. The tenant and witness CA said that they adequately cleaned and also hired professional cleaners. They said that while they may have forgotten to clean the oven and a small black mark on the refrigerator, the landlord did not allow them to come back to clean it, despite their offer. They said that the landlord wanted the rental unit back early, so they were forced to leave in a hurry. There is no breakdown of how much the landlord specifically paid his cleaner(s) to clean the fridge or oven.

As the landlord was mainly unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenant's security deposit of \$3,000.00. No interest is payable on the deposit during the period of this tenancy. As per Residential Tenancy Policy Guideline 17, as the landlord applied to retain a portion of the tenant's security deposit, I am also required to deal with its return to the tenant. Accordingly, I order the landlord to retain \$90.00 from the tenant's security deposit in full satisfaction of the monetary award made in this decision. I order the landlord to return the remainder of the tenant's security deposit in the amount of \$2,910.00 to the tenant within 15 days of receiving this decision.

### Conclusion

I order the landlord to retain \$90.00 from the tenant's security deposit in full satisfaction of the monetary award.

I order the landlord to return the remainder of the tenant's security deposit in the amount of \$2,910.00 to the tenant within 15 days of receiving this decision.

I issue a monetary order in the tenant's favour in the amount of \$2,910.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 18, 2017

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Residential Tenancy Branch