



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KINGSGATE GARDENS CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND MNSD FF

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt applications from both parties:

The corporate landlord applied for:

- a monetary order for damage to the property pursuant to section 67 of the *Act*;
- an order to retain the security deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants applied for:

- a return of the security deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants and landlord attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The landlord was represented at the hearing by A.T. (the “landlord”), while the tenants were represented at the hearing by tenant, B.G. (the “tenant”).

The tenants acknowledged receiving a copy of the landlord’s Application for Dispute Resolution and evidentiary package by way of Canada Post Registered Mail on March 18, 2017. A photograph of the stamped Canada Post envelope was supplied at the hearing by the tenants. The landlord acknowledged being served in person on March, 2017. Pursuant to sections 88 and 89 of the *Act*, both parties are found to have been duly served.

Issue(s) to be Decided

Can the landlord retain the tenants' security deposit? If not, should it be returned?

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

Is either party entitled to a return of the filing fee?

Background and Evidence

Testimony provided at the hearing by both parties confirmed that this tenancy began on March 1, 2016 and ended on February 28, 2017. Rent was \$1,850.00 per month and security and pet deposits of \$925.00 each, collected at the outset of the tenancy continue to be held by the landlord.

The tenants explained that a condition inspection of the rental unit was completed between herself and an agent for the landlord on February 27, 2017. Tenant B.G. explained that she did not agree with the damage described on the report by the agent, and had therefore refused to sign the report. The tenants noted that they provided their forwarding address to the landlord on this date, but did not consent to any deductions.

On approximately March 10, 2017 the tenants received an email from the landlord seeking to return \$200.00 of their security and pet deposit. In this email the landlord explained to the tenants that he sought to keep \$1,650.00 of the tenants' \$1,850.00 pet and security deposit in full satisfaction for damage identified by his agent during the condition inspection report following the conclusion of the tenancy. The tenants explained that they did not consent to this. The tenants are seeking a return of double their security and pet deposit as they alleged that the landlord did not apply to retain their security and pet deposit within 15 days of receiving their forwarding address.

A close examination of the landlord's application and the tenants' evidence reveals that the landlord applied to retain the tenants' security and pet deposit on March 14, 2017, that he mailed his application for dispute to the tenants on March 16, 2017 and that it was received on March 18, 2017.

The landlord is seeking a Monetary Order of \$4,682.00. This amount represents the following:

Item	Amount
Replacement of Carpet	\$1,850.00
Repainting of rental unit	850.00
Cleaning of rental unit	230.00
Loss of Rental Income (12 months x \$100.00)	1,200.00
Expenses to other tenant and loss of Rent for March 2017	552.00
	\$4,682.00

The landlord explained that following the conclusion of the tenancy, he discovered numerous items that required repair. He noted that in particular the carpet needed to be replaced, the stairway walls needed to be painted and that cleaning following the painting was required in the unit. He said that the carpet needed to be replaced in totality because the model used in the apartment was discontinued and he could therefore not find a patch that would match. Furthermore, he stated that the entire stairway required painting because of various scuff marks. He continued by noting that he provided the tenants with a credits of \$565.00 for the carpet and \$400.00 for the paint work associated with the wear and tear they would normally have experienced under the tenancy. The landlord stated that the carpet and paint were approximately 1 year old when the tenants took possession of the unit. As part of his evidentiary package the landlord included a DVD of pictures displaying the damage for which he sought compensation.

In addition to compensation associated with the repairs to the rental unit, the landlord sought a return of loss of rental income associated with the repair works. The landlord explained that he was unable to re-rent the unit due to the damage present. He stated that he had informed the incoming tenant the repair works were needed in the unit, and following negotiations with this person, the landlord and the new tenant agreed to a rent of \$1,750.00, a \$100.00 per month reduction in rent over what the landlord was receiving from the previous tenants. Furthermore, the tenant sought to recover \$552.00 in other expenses related to the following tenancy. He said that the new tenant was unable to occupy the unit until March 9, 2017 because of works that were set to be performed in the unit. The landlord acknowledged these repair works were not performed between, March 1<sup>st</sup> - 9<sup>th</sup>, 2017 but rather performed during the tenant's occupation of the unit, "approximately three months ago."

#### 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 order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove his entitlement to a claim for a monetary award.

During the hearing, the landlord explained that following the end of the tenancy he had to replace the carpet due to pulling on some of seams and paint certain walls because of damage and scratches that the tenants had caused. He also sought to recover the costs associated with cleaning of the rental unit following the painting along with rent that he felt was due for the first nine days of March, and a reduction in rent that he said he was forced to offer the incoming tenant.

The landlord explained that he was unable to re-rent the unit for the same price, as the incoming tenant would be forced to live with the disruption associated with repairs to the carpet and paint. In addition, he said that because of these planned repairs the new tenant was unable to occupy the rental unit until March 9, 2017 versus the March 1, 2017 to which the parties had agreed.

Examining first the issue of the carpet and the paint; the landlord explained that he was unable to patch the carpet because his carpet supplier informed him that these carpets were no longer manufactured. He said that a patch of a different carpet would look strange, and it was for this reason that the entire carpet needed to be replaced. The landlord continued by stating that he required the entire hallway to be painted because it was a stairway which again, had tall walls which needed to match with the rest of the paint. In an effort to reach a compromise, the landlord said that he provided the tenants with a credit of \$565.00 for the carpet and \$400.00 for the paint.

Following a review of the DVD displaying the damage for which the landlord sought compensation, and after having considered the testimony and the landlord's evidentiary package, I find little basis on which to award the landlord the entire amount sought in his monetary order. The pictures contained in the DVD demonstrate that the amount of damage found on the stairs and in the hallway to be negligible. While I heard and considered the landlord's submissions that this particular carpet was no longer available, little evidence was presented as to why it could not be repaired versus replaced. Furthermore, the paint in the hallway that was pictured as being damaged certainly did not require an entire repainting of the entire stairwell. I find that alternatives

could have been found by the landlord. With this in mind, the landlord did suffer a loss as a result of the tenants' actions. I find that the landlord is entitled to 25% a return of the costs associated with the replacement of the carpet, the clean-up and the painting.

As mentioned previously, the landlord also sought a monetary award in reflection of the losses associated with his future tenancy. I find that the amount of repairs associated with the rental unit has been overstated and there is no reason that the tenant who took possession of the rental unit on March 9, 2017 could not have been in occupation of the rental unit on March 1, 2017. Not only were repair works not performed during that time, but testimony was presented at the hearing by the tenant that these works had yet to be performed. When questioned about this work, the landlord was unable to provide a date as to when the repairs had been completed. It is solely the landlord's decision to rent the apartment for \$100.00 less per month than what it was previously rented for. The tenant was not bound by a fixed-term tenancy, and therefore has no obligations to the landlord concerning future rent. I therefore decline to award the landlord the entire amount sought in his application for a Monetary Order.

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and, or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

Testimony was provided at the hearing that this tenancy ended on February 28, 2017. The landlord's application for dispute demonstrates that he applied to retain the tenants' security deposit on March 13, 2017. I find that contrary to the tenants' assertions, the landlord had in fact applied to retain their security deposit within 15 days of receiving their forwarding address. The landlord is therefore directed to return both the pet and the security deposit to the tenants.

As both parties were partially successful in their applications they must both bear the cost of their own filing fee.

The landlord is awarded a Monetary Order of 25% of his application for a monetary order associated with the replacement of the carpet and the painting.

Item	Amount
Replacement of Carpet (25% of \$1,850.00)	\$462.70
Painting (25% of \$1,080.00)	270.00
<b>Total =</b>	<b>\$732.70</b>

Using the offsetting provisions contained in section 72 of the *Act*, the landlord may retain \$732.70 from the tenants' pet deposit.

### Conclusion

The landlord is directed to return \$1,117.30 of pet and security deposit to the tenants.

The tenants are provided with a Monetary Order of \$1,117.30 which shall only be used in the event that the landlord does not return the above named funds. 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.

The landlord may retain \$732.70 from the tenants' pet deposit.

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: August 16, 2017

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Residential Tenancy Branch