



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MND MNDC MNSD FF

### Introduction

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

- a monetary order for compensation for damage or loss 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;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The tenant acknowledged receipt of the landlord's application for dispute resolution including the amended application and evidence on file.

The landlord acknowledged receipt of the tenant's evidence package but argued that it was not served in accordance with the seven day timeline permitted for a respondent to serve evidence. The landlord testified the evidence package was received at the business address on September 29, 2017, six days prior to the hearing. I permitted the tenant's evidence package as I find the landlord still had sufficient time to review the submitted evidence and acceptance of this evidence is not prejudicial to the landlord.

### Issues

Is the landlord entitled to a monetary award for compensation for damage or loss?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

### Background & Evidence

This tenancy was for a six month fixed term beginning on November 1, 2016 and ended on April 30, 2017. The monthly rent was \$3200.00 and the tenants paid a security deposit of \$1600.00 at the start of the tenancy which the landlord continues to hold. A forwarding address was provided by the tenant during a move out condition inspection report completed on May 1, 2017. The landlord made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address.

The landlord is claiming \$716.89 for costs incurred to patch and paint the interior of the rental unit, repaint the front stoop and patio and repair the garage door opener. The landlord testified the tenant made an effort to patch and paint the interior but used the wrong color paint so it had to be redone. The landlord submitted various pictures as evidence of various chips and holes in the walls and scuff marks on baseboards. The landlord testified the interior was completely renovated before the tenancy. The landlord testified the back patio and front stoop were also painted at the beginning of the tenancy but just needed pressure washing. The landlord submitted pictures of the patio and front stoop and argues they had to repaint to remove tricycle marks left behind by the tenants. The landlord also submitted a condition inspection report which indicates the tenant signed off as the patio area being satisfactory and the beginning of the tenancy. The landlord argues the tenancy was only for 6 months and the above is not reasonable wear and tear. The landlord also testified the garage door opener was not working and had to be rewired by the handyman. The landlord submitted an invoice which consisted of 13 hours of labour at a rate of \$45.00 per hour plus \$97.75 for materials.

The landlord is claiming an amount of \$82.69 for yard maintenance which was agreed to by the tenant.

The landlord is claiming an amount of \$262.50 for refinishing a bathtub. The landlord testified the tenant's children damaged the tub by the use of toy cars in the tub. The landlord acknowledged there was a water leak in the tub but the damage claimed is not from the leak. The landlord testified the tub had just been re-glazed at the start of the tenancy. The landlord submitted a picture of the tub showing various chips to the tub surface.

The tenant argues the picture evidence submitted by the landlord for the patch and paint work is blown out of proportion. The tenant argues this was normal wear and tear. The tenant argues the garage door only opened manually and would not open electronically. The tenant argues the front stoop and patio area were not in good condition at the beginning of the tenancy and submitted pictures taken before and after the tenancy. The tenant testified the patio area was cleaned and pressure washed at the end of the tenancy.

The tenant argues they notified the landlord that the bathtub needed repairs as there was a leak and it was starting to peel at the top. The landlord advised it would be fixed at the end of the tenancy. The tenant argues the tub glazer stated it was caused by water getting underneath and causing bubbling and that the tub surface only had one layer so it was peeling easily. The tenant acknowledged his kids used toys in the bathtub but he was not instructed to not do so.

### Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Section 37 of the Act requires 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.

I accept the landlord's claim for loss resulting from having to patch and paint the interior walls. I have reviewed the picture evidence submitted by the landlord and find the damage to the interior walls is not normal wear and tear as alleged by the tenant. From the picture evidence submitted by the parties, I cannot conclude that the exterior patio and front stoop areas were damaged beyond normal wear and tear upon a comparison of the before and after pictures. The condition inspection report submitted by the landlord only states that this area was "satisfactory" with no other details. The move out section only indicates the area required a good clean. The landlord has provided insufficient evidence that these areas were newly painted at the start of the tenancy. As such, I find the landlord suffered some loss for having this area cleaned but not for the re-painting portion. I also find there was insufficient evidence that the garage door opener was not working due to the actions or neglect of the tenants so this part of the landlord's claim is dismissed. As these items were lumped together on one invoice, it is difficult to quantify the exact loss suffered by the landlord. I also note that as the garage door portion of the landlord's claim has been dismissed, the rate of \$45.00 per hour for patch and repair work only appears a bit excessive. The landlord has also not provided any breakdown of the "materials" portion of the invoice. I award the landlord the nominal amount of **\$300.00** for this portion of the claim.

The landlord is awarded **\$82.69** for the yard maintenance expense as agreed to by the tenant.

I accept the landlord's claim for loss resulting from having to re-finish the bathtub. I have reviewed the picture evidence submitted by the landlord and find the damage to the bathtub is not normal wear and tear and on a balance of probabilities was caused by the use of toys versus a water leak as argued by the tenant. The tenant acknowledged the use of toy cars in the bathtub by his kids but argued he was not advised against doing so. It is not a requirement for the landlord to advise the tenants to not use toys not intended for a bathtub. The landlord is awarded **\$262.50** as claimed.

As the landlord was for the most part successful in this application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application from the tenants.

**Total entitlement for Landlord: \$745.19** (\$300.00 + \$82.69 + \$262.50 + 100.00)

The landlord continues to hold a security deposit in the amount of \$1600.00. The landlord is permitted to retain \$745.19 from this security deposit in full satisfaction of the monetary award and the balance of \$854.81 is to be returned to the tenants forthwith.

The tenants are granted a Monetary Order in the amount of \$854.81.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$854.81. 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: October 06, 2017

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Residential Tenancy Branch