



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute codes:** MNSD MND FF

### **Introduction**

This hearing was originally scheduled December 11, 2017 and reconvened pursuant to an adjournment and Interim Decision in response to an application by the landlord made June 20, 2017 for dispute resolution pursuant to the *Residential Tenancy Act* (the Act) for a monetary order and recovery of the filing fee. The landlord applied to retain the security deposit in full satisfaction of their monetary claim for damages to the unit.

Both parties appeared in the reconvened conference call hearing. The parties were again provided opportunity to mutually resolve the dispute in its entirety with fractional agreement. Each party provided their evidence to the proceeding. Both parties acknowledged being in possession of the other's evidence as provided to this hearing.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The evidence is as follows. The tenancy began November 01, 2016 and was guided by a written tenancy agreement. The parties agree the tenancy was for a furnished unit. The payable monthly rent was \$2400.00. At the outset of the tenancy the landlord collected a security deposit in the sum amount of \$2400.00 which they retain in trust. The parties agreed the tenancy ended May 31, 2017 when the tenant vacated. The parties agreed they mutually conducted a *move in* inspection at the outset of the tenancy and mutually conducted a *move out* inspection June 16, 2017. The latter was pursuant to a written final opportunity for condition inspection received by the tenant. The landlord testified they were unable to conduct an earlier inspection with the tenant despite knowing of the tenancy's end for months in advance. The parties agreed that the landlord completed a condition inspection report (CIR). The landlord claimed the CIR was reviewed by the parties at the end of the move out inspection. The tenant

disagreed with the landlord's CIR and as a result declined to express their written reasons on the CIR or sign it. The parties agreed the landlord did not subsequently provide the tenant with a copy of the CIR until recently, within the submissions of the landlord's evidence. The landlord obtained the tenant's forwarding address on the date of the move out inspection and chose to file for dispute resolution within the time permitted to do so. The tenant agreed they have since reviewed the landlord's evidence in support of the landlord's claims and generally disputes the landlord's evidence. None the less the parties were able to agree on portions of the landlord's claim. The tenant agreed that the refrigerator door was left damaged with a dent in its front (refrigerator door). The parties agreed in respect to the landlord's claim for the dining room window 'film' replacement in the amount of \$120.00, as well as \$129.00 for a missing framed picture belonging to the landlord. the landlord provided a quote for replacement of the refrigerator door of \$685.33 in US funds.

The landlord also claims that the tenant damaged the window in the master bedroom, leaving the window visibly cracked. As well the landlord claims that the tenant scratched the French door glass panel. The landlord itemized these two issues within the CIR and provided photo images of same. The tenant denied being responsible in respect to the cracked window, and that the issue with the French door was not brought to their attention during the move out condition inspection. In addition the landlord seeks \$950.00 for remediation to broken tiles, drywall holes, dents, scratches and gouges as well as repainting. The landlord provided an estimate for the work inclusive of tax. In addition the landlord seeks replacement of a television remote control unit missing from the rental unit at the end of the tenancy. The tenant denies they are responsible for the missing remote unit. The tenant asserted they did not take the unit. The parties agreed that in the 16 days before the agreed move out inspection date there were other individuals in and out of the rental unit, however the tenant did not testify being of the determination one of those individuals being responsible for the missing remote.

### **Analysis**

The onus is on the applicant to prove their claim on balance of probabilities. On preponderance of all evidence submitted, and on balance of probabilities, I find as follows:

The landlord currently holds a security deposit of \$2400.00. **Section 38** of the Act

states that, within 15 days after the later of, the date of the end of the tenancy and the landlord receiving the tenant's forwarding address in writing, the landlord must either

repay any deposit of the tenancy back to the tenant or file an application for dispute resolution making a claim against the deposit. I find the tenant's right to the return of their security deposit is not extinguished. I find the tenant provided their forwarding address in writing June 16, 2017. The landlord determined to file for dispute resolution.

**Residential Tenancy Regulation 18** states as follows (**emphasis added**)

**Condition inspection report**

- 18** (1) The landlord must give the tenant a copy of the signed condition inspection report
- (a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and
  - (b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of
    - (i) the date the condition inspection is completed, and
    - (ii) the date the landlord receives the tenant's forwarding address in writing.
- (2) The landlord must use a service method described in section 88 of the Act *[service of documents]*.

I find that pursuant to **Section 36(2)** of the Act the landlord was obligated to provide the tenant a copy of the CIR in accordance with the above Regulation if they made an inspection with the tenant. I find the landlord did not do so and as a result their right to make a claim against the security deposit is extinguished. As a result, the tenant is entitled to the return of their security deposit in its entirety of \$2400.00, subject only to any offsetting provisions as a result of the landlord's application.

Under the *Act*, a party claiming a loss bears the burden of proof. Moreover, the applicant for loss must satisfy each component of the following test established by **Section 7** of the Act, which states;

***Liability for not complying with this Act or a tenancy agreement***

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the tenant)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (landlord) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I find the tenant and landlord agreed the landlord is owed the sum of **\$249.00** for window film and a missing framed picture. I also accept the tenant's evidence they are responsible for a dent in the refrigerator door, for which I grant the landlord the cost for a new door as submitted into evidence. I do not have benefit of evidence from the landlord in respect to monetary conversion rates from US funds, therefore, I grant the landlord the set amount of CAN **\$685.33**.

In the absence of receipts I find that the landlord has not submitted sufficient evidence meeting the above test pursuant to Section 7 of the *Act*. As a result, I **dismiss** the landlord's claim for a cracked window and a scratched French door glass panel.

I find the landlord's claim for broken tiles, and drywall repairs and repainting meets the above test established by Section 7 of the *Act*, and the amount claimed is not extravagant. As a result, I grant the landlord their claim, which I set at \$849.00 plus GST, as per their estimate, in the amount of **\$891.45**.

On balance of probabilities, I find the landlord knew of the tenancy end date months in advance and it was available to the landlord to conduct the move out inspection with the tenant upon them vacating the rental unit or very soon thereafter so as to mitigate doubt in respect to items determined as missing. While the tenant has not proven that the television remote control went missing as a result of the actions of other individuals the

landlord has not proven that the tenant was responsible for the missing remote control during the tenancy period ending May 31, 2017. As a result, I **dismiss** the landlord's claim of \$99.99 for a new remote control.

As the landlord was in part successful in their applications they are entitled to recover their filing fee of \$100.00 for a sum award of **\$1925.78**. The security deposit in trust will be offset from the award made herein.

Calculation for Monetary Order

Tenant's security deposit	\$2400.00
Minus landlord's sum award inclusive of filing fee	- \$1925.78
return to tenant	( \$474.22)

**Conclusion**

The landlord's application, in part, has been granted.

**I Order** the landlord may retain \$1925.78 from the tenant's security deposit and return the balance of \$474.22 to the tenant, forthwith.

To perfect the above Order **I grant** the tenant a **Monetary Order** under Section 67 of the Act in the amount of **\$474.22**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding.**

*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: February 27, 2018

---

Residential Tenancy Branch