



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CUSTOM REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNSD

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord filed an Application requesting a monetary order for damage to the rental property.

The Tenant filed an application for the return of the security deposit and or pet damage deposit.

The matter was scheduled as a teleconference hearing. Both parties appeared at the hearing and provided affirmed testimony. The hearing process was explained and the parties were asked if they had any questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. The Tenant confirmed that a copy of the Landlord’s documentary evidence was received in the mail. The Tenant did not submit any documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to compensation for damage to the rental unit?
- Is the Tenant entitled to the return of the security deposit?

Background and Evidence

The parties testified that the tenancy began on August 1, 2016. Rent in the amount of \$1,625.00 was due on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$812.50. There was no pet damage deposit.

The parties submitted that the Tenant moved out of the rental unit on July 31, 2017.

Landlord's Application

The Landlord is seeking compensation from the Tenant for the costs to repair damage and clean the rental unit at the end of the tenancy. The Landlord seeks compensation for the following items:

Janitorial	\$105.00
Venetian Blind Replacement	\$127.23 + \$173.72
Venetian Blind installation	\$47.25
Water damage and mould	\$94.50
Painting supplies	\$50.00
Painting Labour	\$94.50
Total	\$693.33

Janitorial

The Landlord submitted that the rental unit was clean at the start of the tenancy. The Landlord testified that the Tenant did not complete the cleaning of the unit at the end of the tenancy. The Landlord testified that the Tenants requested additional time to clean the unit. The Landlord testified that the Tenants were given extra time until 4:00 pm to clean. The Landlord provided photographs showing the condition and state of repair of the rental unit at the end of the tenancy. The Landlord provided a copy of a receipt dated July 31, 2017, in the amount of \$105.00 for the additional cleaning of the rental unit that was required.

In response, the Tenant submitted that he does not agree with the Landlord's claim for cleaning costs. He submitted that he spent more than four hours cleaning the rental unit.

Venetian Blind Replacement and Installation

The Landlord testified that two blinds needed to be repaired due to damage. The Landlord testified that an exterior door window blind and a sliding door blind needed to be repaired. The Landlord provided three photographs showing damaged blinds. The Landlord testified that the blinds were in new condition at the start of the tenancy. The Landlord provided a copy of a receipt in the amount of \$127.33 dated August 9, 2017, for the cost to repair the blinds. The Landlord submitted that it cost \$45.00 for the labour cost to reinstall the blinds. The Landlord provided a receipt dated August 18, 2017, in the amount of \$45.00 for the cost to drop off and pick up the blinds.

In response, the Tenant testified that he is responsible for the damage to one blind that was on the door to the balcony; however, he is not in agreement for the cost to repair the second blind. The Tenant testified that he second blind was never used. The Tenant testified he is not responsible for the full installation cost of both blinds.

Water Damage and Mould Repair

The Landlord testified that there was water damage on the wall of the bedroom. The Landlord testified that the Tenant is responsible for the damage. The Landlord testified that they cut a portion of the drywall away from the wall to investigate if the moisture was coming from behind the wall. The Landlord testified that there was no source of water coming from behind the wall. The Landlord provided a photograph of the bedroom wall taken at the start of the tenancy and photographs of the water damaged wall at the end of the tenancy. The Landlord is seeking the costs to repair the wall. The Landlord is claiming for the supplies and labour to fix the drywall and repaint the wall. The Landlord provided a receipt in the amount of \$180.00 for the labour costs and \$50.00 for painting supplies.

In response, the Tenant testified that he did not use water in the bedroom and that the wall was not damaged. He testified that the wall was not wet to the touch. He testified that when he moved the bed, there was a mark on the wall directly behind where the bed was located. The Tenant testified that he is not responsible for the material and labour costs to repair the wall. The Tenant testified that he became angry at the time of the move out inspection because the Landlord did not believe him about the alleged damage to the bedroom wall.

### Tenant's Application

The Tenant is seeking the return of the security deposit in the amount of \$812.50. The Tenant testified that he provided the Landlord with his forwarding address in writing using email on August 10, 2017, and again using regular mail shortly thereafter.

In response to the Tenant's testimony, the Landlord testified that they received the Tenant's forwarding address on August 10, 2017. The Landlord's evidence contains an email received from the Tenant on August 10, 2017, where he provided his forwarding address. The Landlord applied for dispute resolution on August 18, 2017, seeking a monetary order for damage.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, and proof that the party took all reasonable measures to mitigate their loss.

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

*An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.*

*A party seeking compensation should present compelling evidence of the value of the damage or loss in question.*

Section 38 (1) of the Act states 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 any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

*If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.*

Based on all of the above, the evidence and testimony of the parties, and on a balance of probabilities, I find as follows:

Landlord's Application

Janitorial

I find that the rental unit was not ready for the move out inspection at 1:00 pm on July 31, 2017, and the Landlord granted the Tenant additional time to clean the rental unit.

I find that there is insufficient evidence from the Landlord to establish that the rental unit needed additional cleaning. The Landlord's photographs of the rental unit taken at the end of the tenancy are too small and of such poor quality that they have very little probative value on the condition and state of repair of the bathroom, kitchen and walls. The Landlord's claim or cleaning costs is dismissed.

Venetian Blind Replacement and Installation

The Tenant accepted responsibility for damage to one blind. The condition inspection report completed and signed by the parties at the start of the tenancy indicates the windows and coverings were in good condition. The Landlord's photographs of the blinds, taken at the end of the tenancy, show that the blinds were damaged. I find that the Tenant is responsible for the damage done to both blinds.

The Landlord only produced one receipt for the repair of the blinds. I grant the Landlord the amounts of \$127.23 for the cost of to repair the blinds and an additional \$90.00 for installation and delivery costs.

Water Damage and Mould, Painting Supplies and Labour

I find that the Tenant is partially responsible for the damage to the wall in the bedroom. I find that it is more likely than not that the Tenant's bed was pressed up against the wall causing abrasion to the wall and a lack of air circulation. I find that the lack of air circulation can cause moisture. I find that the Tenant is responsible for any marks, abrasions or dampness on the wall; however, I find that the Landlord is partially responsible for the decision to remove the drywall. While I accept that the wall had some moisture, I am not satisfied that the wall was wet to the degree that the Landlord needed to cut away a portion of drywall to investigate.

I grant the Landlord 50% of the claimed amount for the repair to the bedroom wall. I award the Landlord the amount of \$94.50 for the repair of the bedroom wall. I award the Landlord \$25.00 for the cost of materials.

#### Tenant's Application

I find that the Tenant moved out of the rental unit on July 31, 2017, and provided his forwarding address to the Landlord on August 10, 2017.

The Landlord applied for dispute resolution on August 18, 2017; however the Landlord's application does not include a claim against the security deposit. I find that there was no agreement between the parties that the Landlords could retain the security deposit or pet damage deposit.

I find that the Landlord's breached section 38 of the Act by failing to apply to keep the deposit within 15 days of receiving the Tenant's forwarding address. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit.

I order the Landlord to pay the Tenant the amount of \$1,625.00.

#### Set-off of Claims

The Landlord has established a monetary claim in the amount of \$336.73 for the costs to repair damage.

The Tenant has established a claim in the amount of \$1,625.00 for double the amount of the security deposit.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with the application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. The Tenant's application fee was waived.

After deducting the Landlords award of \$436.73 from the amount of \$1,625.00 awarded to the Tenant, I grant the Tenant a monetary order for the balance of \$1,188.27. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord failed to make a claim or return the security deposit to the Tenant in accordance with the legislation. The Tenant is awarded \$1,625.00 for double the amount of the security deposit.

The Landlord established a monetary claim against the Tenant in the amount of \$463.73.

After setting off the amounts of the wards, I grant the Tenant a monetary order in the amount of \$1,188.27.

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: March 19, 2018

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Residential Tenancy Branch