



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FF MND MNDC MNSD

### **Introduction**

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

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- 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;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

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

Is the landlord entitled to a Monetary Order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain a portion or all of the security deposit in satisfaction of their monetary claim?

Is the landlord entitled to recover the cost of the filing fee for this application?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on September 15, 2016, with monthly rent set at \$1,800.00. The landlord still holds a \$900.00 security deposit. The tenant gave notice on July 31, 2017 to end this tenancy effective August 31, 2017. The tenant provided the landlord with his forwarding address on September 5, 2017.

The tenant testified that no move in or move out inspections were ever done, even though the landlord had provide a copy of an inspection report for both occasions. The tenant testified that the dates were not probable. The tenant testified that they had viewed the home on August 6, 2016, while it was still occupied by the previous tenants. The landlord indicated August 6, 2016 as the date of the move-in inspection. The move-out inspection was dated August 21, 2017, which the tenant testified was before the tenancy had even ended. The tenant testified that the inspection report for both occasions was completed after the landlord had filed the application for dispute resolution on September 11, 2017, which the landlord did not dispute. The landlord admitted in the hearing that dates on the inspection reports were not correct, but that the tenant was given an opportunity to do an inspection on September 25, 2017, after the tenancy had moved in, but the tenant did not attend so the landlord performed the inspection in the tenant's absence. The landlord testified that the tenant was sent one text message offering an inspection.

At the outset of the hearing the landlord withdrew the monetary application for reimbursement of the cost of blind replacement and floor repairs.

The landlord provided the following list of damages for the landlord's monetary claim:

Item	Amount
Paint for railing	\$19.42
Lightbulbs	18.68
Cleaning supplies	27.15
Time Spent Cleaning (17.5 hours x \$40/hour)	700.00
Loss of Rent for September 2017	1,800.00
<b>Total Monetary Order Requested</b>	<b>\$2,565.25</b>

The landlord testified that the home was renovated and painted in 2014. The landlord is seeking reimbursement for the above losses as the paint was wearing off the metal on the stair railing. The landlord testified that the tenant failed to replace the burnt out lightbulbs in the bathroom, microwave, and oven. The landlord also testified that the tenant failed to leave the home in clean condition, and the landlord spent 17 hours cleaning.

The landlord is also seeking 1 month's rent for September 2017 as the landlord did not have access to show the home until September 1, 2017. The landlord testified that the home was posted online for rent, but could not confirm when the landlord had first posted the home for rent. The landlord admitted that the home was never shown to any prospective tenants, and that

the home was sold at the end of October 2017, instead of being re-rented. The landlord had listed the home for sale in June of 2017. The tenant disputes having ever denied access to the landlord, but expected that the landlord provided proper 24 hour notice before entering the home. The tenant testified that the landlord had never attempted to mitigate any losses by re-renting the home, but had sold the home instead.

The tenant testified that he had left the home in undamaged and clean condition, and disputes the landlord's entire monetary claim.

### **Analysis**

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

The evidence of the landlord is that the landlord suffered a loss of 1 month's rent due to the tenant's refusal to allow the landlord access to show the home. It was undisputed that the landlord had listed the home for sale since June 2017, and had sold the home by the end of October 2017. I am not satisfied that the landlord provided sufficient evidence to demonstrate that the tenant had refused the landlord access to enter the home in a manner that is allowed under the *Act*, and I am not satisfied that the landlord had made adequate efforts to mitigate the tenant's exposure to the landlord's monetary loss by re-renting the suite as soon as possible, as is required by section 7(2) of the *Act*. The landlord admitted in the hearing that the home was never shown to prospective tenants, but that the home was sold the next month. I, therefore, dismiss the landlord's monetary claim for loss rental income for the month of September 2017.

Section 37(2)(a) of the *Act* stipulates 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. The landlord testified that a move-in and move-out inspection was completed. Although a copy of the reports was provided for the purposes of this hearing, the tenant provided undisputed evidence that the landlord's dates were incorrectly noted on the report. I find the tenant's testimony that the landlord completed the inspection and reports in the absence of the tenant, and on a different date than the ones indicated on the report, to be undisputed by the landlord.

I find that the testimony and evidence provided by both parties supports that, on a balance of probabilities, the landlord's failure to comply with sections 23 and 35 of the *Act* which requires the landlord to perform both move-in and move-out inspections with the tenant, and fill out condition inspection reports for both occasions. I accept the tenant's testimony that the landlord had falsified the dates on both the move-in and move-out reports. The consequence of not abiding by these sections of the *Act* is that "the right of the landlord to claim against a security

deposit or a pet damage deposit, or both, for damage to residential property is extinguished", as noted in sections 24(2) and 36(2) of the *Act*.

In the absence of any move-in and move-out inspection reports that were completed in accordance with the *Act*, I have no way of ascertaining the condition of the home at the beginning and end of this tenancy. I find that the landlord failed to provide sufficient evidence to support that the tenant had failed to leave the rental home in a reasonably clean and undamaged condition, with the exception of wear and tear. Accordingly the remaining portion of the landlord's monetary claim is dismissed without leave to reapply.

As the landlord was unsuccessful with their monetary claim, the landlord's application to recover the filing fee is dismissed without leave to reapply.

### **Conclusion**

The landlord's entire application is dismissed without leave to reapply.

I issue a Monetary Order in the amount of \$900.00 in the tenant's favour which allows for the return of the tenant's security deposit to the tenant.

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of 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: May 4, 2018

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Residential Tenancy Branch