



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, FF

### Introduction

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

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 its filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenants with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties confirmed that the tenants did not file or serve any documentary evidence for the hearing. As such, I am satisfied that both parties have been sufficiently served with the notice of hearing package the submitted documentary evidence as per section 90 of the Act.

At the outset, the landlord's agent (the landlord) clarified that the monetary claim is being lowered to \$2,339.75 as the initial claim was based upon estimates. The tenants acknowledged their understanding and no objections were made.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 1, 2016 on a fixed term tenancy ending on October 31, 2017 as per the submitted copy of the signed tenancy agreement dated October 4, 2016. The monthly rent was \$3,200.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$1,600.00 was paid on October 21, 2016.

The landlord claims that a condition inspection report for the move-in was completed, but not provided. The tenants disputed this claim stating that no inspection report for the move-in was completed by the landlord and the tenants. Both parties confirmed that a condition inspection report for the move-out was completed by both parties on October 31, 2017.

The landlord seeks an amended monetary claim of \$2,339.75 which consists of:

\$160.00	Maid (Cleaning)
\$630.00	Repairs (holes, painting, 2 closet doors, missing closet rod)
\$99.75	Carpet Cleaning
\$50.00	Missing visitors parking pass
\$200.00	Strata Bylaw Fine (February)
\$200.00	Strata Bylaw Fine (March)
\$800.00	Strata Bylaw Fine (May)
\$200.00	Strata Bylaw Fine (June)

The landlord provided undisputed affirmed evidence that this was a new unit and the tenants were the first occupants. At the end of tenancy the landlord claims that the unit was left dirty and damaged and refers to the completed condition inspection report for the move-out dated October 31, 2017 and the attached photographs. The report notes "marked" flooring and dirty windows in the kitchen, "marked" flooring in the bedroom, "marked" and "damaged" walls in the 2<sup>nd</sup> bedroom, "dirty" walls, doors and flooring on the patio. The landlord also provided undisputed testimony that a condition of the signed tenancy agreement for the tenants to have professional carpet cleaning performed at the end of tenancy.

The landlord also claims that the tenants failed to return a visitors parking pass and that Strata Bylaw Fines totalling, \$1,400.00 were imposed by the "Strata" for the premises during this tenancy.

The tenants dispute the landlord's claims stating that a professional cleaner was hired at the end of tenancy and that it was left clean as noted in the completed condition inspection report. The landlord clarified that there are general notations of the premises being dirty, but no evidence to support the claim that additional cleaning was required was provided. The tenants also argued that no damage was left and referred to both the completed condition inspection report and the attached photographs. I note that in reviewing the photographs, there is no clear evidence of damage other than the markings on the walls and trim. The landlord stated that there was further damage to the hardwood floors that were not noted on the move-out report or in the photographs. The tenants dispute the landlord's carpet cleaning claim noting that the carpets were left clean. The tenants dispute the landlord's claim regarding the missing visitors parking pass as they had never received one. The landlord claims that although no passes were given at the beginning of the tenancy, the passes were noted as being given out at a later time. The landlord was unable to provide sufficient evidence to support the claim that a visitors pass was given to the tenants. The tenants confirmed the Strata Bylaw Fines, but state that some of the payments were made and that the landlord was notified. The landlord stated that there are no indications that the fines were paid.

### 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 on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I find that the landlord has established a monetary claim for the following totalling, \$1,400.00 which consists of:

\$200.00      Strata Bylaw Fine (February)

\$200.00	Strata Bylaw Fine (March)
\$800.00	Strata Bylaw Fine (May)
\$200.00	Strata Bylaw Fine (June)

Although the tenants have claimed that partial payments have been made, no evidence has been submitted in support of this, nor is the landlord aware of any payments made. The tenants confirmed that the Strata Bylaw Fines were imposed for the rental premises during the tenancy period.

As for the following monetary claims of the landlord totalling \$939.75 which consists of:

\$160.00	Maid (Cleaning)
\$630.00	Repairs (holes, painting, 2 closet doors, missing closet rod)
\$99.75	Carpet Cleaning
\$50.00	Missing visitors parking pass

I find that the landlord has failed to provide sufficient evidence to establish a claim. Although the landlord has provided an invoice for cleaning of \$160.00, the landlord relies solely on the completed condition inspection report for the move-out dated October 31, 2017. A review of the report notes only dirty windows in the living room, dirty walls, doors and flooring on the patio/balcony. A review of the attached photographs reveal only one photograph of a limited assistance showing dirt built up outside the patio/balcony area on the concrete flooring. The landlord's application for repairs refer to holes in the walls, required filling and touch up painting, scratches on floors, burn marks, 2 damaged closet doors and a missing closet rod. A review of the condition inspection report for the move-out notes, damage to the kitchen doors, exhaust fan in the bathroom and the damaged wall in the 2<sup>nd</sup> bedroom. A review of the attached photographs show 3 photographs of 3 small marks on the kitchen walls, 2 photographs of folding closet doors in the kitchen, marks and scuffing on the 2<sup>nd</sup> bedroom walls. I find that the evidence provided by the landlord does not substantiate the claim of damage reported in the submitted invoice. The landlord failed to provide further details clarifying these claims. The landlord's claim for the cost of replacing a missing visitors parking pass is unsubstantiated as the tenants have disputed them. The tenants' disputed that the claim and has provided insufficient evidence that one was provided to the tenants. On this basis, these items of claim by the landlord are dismissed.

The landlord has established a total monetary claim of \$1,400.00. The landlord having been successful in the application is entitled to recovery of the \$100.00 filing fee. In

offsetting this claim, I order the landlord retain the \$1,500.00 amount from the currently held \$1,600.00 security deposit in satisfaction of this claim. I order the landlord to return the outstanding balance of \$100.00 to the tenants, forthwith.

I note that during the hearing the tenants provided testimony that some portion of the Strata Bylaw Fines were paid, but that insufficient evidence of such was provided. If such evidence does exist, the tenants are directed to provide copies of such to the landlord and shall be credited for this amount.

### Conclusion

The tenants are granted a monetary order for \$100.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: June 26, 2018

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Residential Tenancy Branch