



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S, FFL  
                             MNDCT, MNSD, FFT

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on June 14, 2018. The Landlord applied for a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover the filing fee. The Tenant’s Application for Dispute Resolution was made on June 26, 2018. The Tenant applied for the return of their security deposit, compensation under the *Act* and the return of the filing fee.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all the evidence and testimony 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.

### Preliminary matter

During the hearing, the Tenant testified that the Landlord had not served him with the Notice of hearing documents. The Landlord testified that the first notice of hearing document had been sent to the Tenant via regular mail. However, the amendment request had been sent via Canada Post Xpresspost.

I note that the amendment application was to increase the Landlord's claim from \$375.00 to \$3,234.00 and that amendment application included the complete details of the Landlord's claim.

The Tenant testified that he had received the amended application request and that he understood what the Landlord was seeking in her claim against him.

I find that the Tenant has been duly notified of the hearing and provided with sufficient notice of the Landlord's application and of the details of that claim. Therefore, I will allow the Landlord's amendment request and proceed with this hearing.

#### Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?
- Is the Landlord entitled to recover the cost of the filing fee?
- Is the Tenant entitled to the return of his security deposit?
- Is the Tenant entitled to a monetary order for compensation under the *Act*?
- Is the Tenant entitled to recover the cost of the filing fee?

#### Background and Evidence

Both parties testified that the tenancy began on June 1, 2017, as a one-year fixed term tenancy that rolled into a month to month after the first year. Rent in the amount of \$1,750.00 was to be paid by the first day of each month and at the Tenant had paid 12 months of rent, in the amount of \$21,000.00 the outset of the tenancy. The Tenant also paid an \$875.00 security deposit.

The parties agreed that the Landlord issued a Two-Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice") dated May 6, 2018. Both Parties agreed that the Tenant paid rent for June 2018 and that the Tenant issued a 10-day notice to the Landlord to end his tenancy early. Throughout the hearing, both parties to this dispute were confused and had difficulty confirming the date when the Landlord served the Notice to end the tenancy, the date when the Tenant served his 10-Day notice to end the tenancy.

Both parties agreed that the Tenant moved out of the rental unit on June 30, 2018, and that the Tenant had given sufficient notice to the Landlord to end the tenancy. Additionally, both parties agreed that the Landlord has not paid the one month's rent compensation or returned the security deposit to the Tenant under.

The Landlord testified that when she attended the rental unit on June 30, 2019, the Tenant was in a hurry, so they just did a quick walkthrough of the rental unit and did not fill out the move-out inspection form. The Landlord testified that there was damage to the walls throughout the rental unit and that the floor had scratches. The Landlord provided eight pictures of the walls and the floor of the rental unit, into documentary evidence. As well as a copy of the move-in inspection report.

The Landlord testified that during the quick walkthrough of the rental unit, on June 30, 2018, the Tenant had verbally agreed to the Landlord keeping \$300.00 of the security deposit. However, the Landlord testified that it ended up costing much more to have the damage to the rental repaired. The Landlord testified that she had to have the entire unit re-painted and the floors redone at the cost of \$3,234.00, comprised of \$2,100.00 in wall patching and painting and \$980.00 in floor repair, plus \$154.00 in GST. The Landlord provided a copy of the work invoice into documentary evidence.

When asked the Landlord could not say how old the floors in the rental unit were, but that the walls had been freshly painted before the Tenant moved in.

The Tenant testified that he had patched all the holes in the walls before he left and had painted the sections he patched, but the colour had been slightly off. The Tenant agrees that two walls in the rental unit would need to be repainted but that the remaining walls were fine. The Tenant also testified that there had been one small area of wear on the floor at the end of the tenancy.

As for the move out inspection, the Tenant testified that yes, he had been in a hurry as his daughter was in the car waiting for him but that it was the Landlord who had chosen not to complete the move-out inspection. As she had a prospective buyer and her realtor waiting outside to see the place.

The Landlord testified that yes, she had issued the Notice as she was planning on selling the place, and that yes, she had a prospective buyer waiting to see the unit that day, but that she only rushed the move-out inspection because the Tenant was in a hurry.

The Tenant is seeking the return of his security deposit and the one month's worth of rent due to him under the Notice that the Landlord issued.

### Analysis

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

I accept the testimony of both parties that this tenancy ended in accordance with the *Act* on June 30, 2018. I also accept the testimony of both parties that the Landlord did not conduct the move-out inspection at the end of this tenancy. Section 35 of the *Act* states the following:

#### **Condition inspection: end of tenancy**

- 35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit,
  - or
  - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

It is the responsibility of the Landlord to ensure that the move-out inspection was completed as required. I find that the Landlord was in breach of section 35 of the *Act* by not completing the move-out inspection.

#### **Consequences for tenant and landlord if report requirements not met**

- 36** (2) Unless the tenant has abandoned the rental unit, 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 if the landlord
- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],

- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Consequently, pursuant to section 36 (2) of the *Act*, I find that by not completing the move-out inspection the Landlord has extinguished her right to make a claim against the security deposit for the damages to the rental unit and that the Landlord should have returned the security deposit to the Tenant within 15 days of the tenancy ending, pursuant to section 38 of the *Act*.

Section 38 of the *Act* states that if the landlord has been extinguished their right to make a claim, and they have not returned the security deposit within the 15 days of the tenancy ending, the landlord must pay the tenant double the security deposit.

#### **Return of security deposit and pet damage deposit**

**38 (5)** The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or **36 (2) [*landlord failure to meet end of tenancy condition report requirements*]**.

- (6) If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant has successfully proven that he is entitled to the return of double the security deposit, in the amount of \$1,750.00.

I accept the testimony of both parties that the Landlord issued a Two-Month Notice to End Tenancy for Landlord's Use of the Property, and that the Tenant has not been paid

the one month's compensation required under the Notice. Section 51 of the Act states the following:

**Tenant's compensation: section 49 notice**

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I have reviewed the Notice issued by the Landlord, pursuant to section 49 of the *Act*, and I find that the compensation should have been paid by July 31, 2018. I find that the Landlord is in breach of section 51(1) of the *Act*, by not paying the compensation to the Tenant by July 31, 2018. Therefore, I find that pursuant to section 51 of the *Act* the Tenant has successfully proven that he is entitled to, in the amount of \$1,750.00.

As for the Landlord claim for a monetary order for damages. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I have carefully reviewed the Landlord's documentary evidence, and I find that the Landlord has not provided sufficient evidence to show that the Tenant breach the *Act*. Therefore, I dismiss the Landlord's claim for the recovery of his costs for paint the rental unit and repairing the floor.

I find for the Tenant, in the amount of \$3,500.00, granting a monetary order for the return of double the security deposit and award one months rent compensation pursuant to section 51 of the *Act*.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in his application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for his application.

### Conclusion

I grant the Tenant a Monetary Order in the amount of \$3,600.00. The Tenant is provided with this Order in the above terms, and the Landlord must be served with 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: September 14, 2018

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Residential Tenancy Branch