



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to monetary compensation for damages?  
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties agreed that the tenancy began September 2015. Rent in the amount of \$1,195.00, plus \$130.00 utilities, was payable on the first of each month. The tenants paid a security deposit of \$600.00 and a pet damage deposit of \$200.00 (the “Deposits”). The tenancy ended on September 3, 2018.

The parties did not complete a written move-in condition report. The parties did complete a move-out inspection.

The landlord testified that the tenants made large holes in the walls that were above normal wear and tear. The landlord stated that the tenants filled the holes; however, this left large patches of filler which required the walls to be repainted. The landlord stated that the last time the rental unit was painted was in 2011. The landlord seeks to recover

the cost of repainting in the amount of \$630.00. Filed in evidence are photographs and receipts.

The tenants testified that they filled the holes as required. The tenants stated that they are not responsible to have the entire walls painted. The tenant stated that the landlord could have had the paint matched.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

### **Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, the evidence was that the walls had to be painted to due large holes that were filled, but not painted by the tenants.

Even if I find the tenants were responsible to paint the patches, as they could have had the paint colour matched, just as easily as they suggested that the landlord could.

However, the Residential Tenancy Policy Guideline 40 defines the useful life of building elements. If the tenants damaged an item, the age of the item may be considered when calculating the tenants' responsibility for the cost of replacement.

I have determined based on the guideline that the paint had a useful life span of four years. The paint was seven years old at the time of replacement. I find the landlord is not entitled to recover the cost of repainting as the useful life span had already exceeded. Therefore, I dismiss the landlord's claim for damages.

Since the landlord was not successful, I find the landlord is not entitled to recover the filing fee from the tenants. As the tenants seek double the Deposit, I have reviewed section 38 of the Act.

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

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this case, the landlord applied within 15 days as required by section 38(1) of the Act. Section 38(6) of the Act stated if the landlord does not comply with section 38 (1) of the Act the tenants are entitled to double the Deposit.

As the landlord's application was dismissed, I find the landlord is not entitled to retain any of the Deposits. Therefore, I find the landlord must return the Deposits to the tenants.

Should the landlord fail to comply with my Order, I grant the tenants' a monetary order for the return of the security deposit (\$600.00) and pet damage deposit (\$200.00) in the total amount of **\$800.00**, pursuant to section 67 of the Act.

This 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's application is dismissed. The tenants are granted a monetary order for the return of their Deposits.

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: January 16, 2019

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Residential Tenancy Branch