



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act"), on September 13, 2018. The Landlords applied for a monetary order for damages to the rental unit, permission to keep the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

One of the Landlords and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both parties 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 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 a monetary order for damages?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

### Preliminary Matter

At the end of this hearing, the Landlord withdrew her claim for \$184.77, for the recovery of her costs to replace the locks to the rental unit.

### Background and Evidence

The parties to this dispute agreed that this tenancy began on September 1, 2016. That rent in the amount of \$1,500.00, was to be paid by the first day of each month and that the Landlord is holding a \$750.00 security deposit that was paid by the Tenants at the beginning of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The parties also agreed that the Tenants move out of the rental unit on August 30, 2018, and that the move out inspection was completed with the Landlord and the Tenant present, on August 31, 2018. The Landlord provided a copy of the move out inspection into documentary evidence.

The Landlord testified that the Tenants had left the rental unit in a dirty and damaged state, the Landlord is claiming for the recovery of \$1,358.52 worth of repairs and cleaning that was needed at the end of the tenancy. The Landlord submitted 86 pictures of the rental unit taken at the end of the tenancy, one invoice and one estimate into documentary evidence.

The Landlord is claiming the following:

- \$1,023.75 for drywall and painting repairs, and
- \$150.00 for window cleaning,

The Landlord testified that at the Tenant had damaged the walls in the rental unit. The Landlord testified that there was a hole in the entrance way of the rental unit from the door knob of the front door hitting the wall. That paint chips were missing in all of the doors of the rental unit, that there were dents in the walls in the basement and that there were various chips and dents in the walls and corners of the kitchen, living room, dining room and bedrooms. The Landlord testified that she feels that the Tenant damaged the rental unit and that what was returned to her at the end of this tenancy was more than just normal wear and tear. The Landlord testified that she had submitted pictures that will show the extent of the damage.

The Tenant testified that her, her husband and their six children lived in the rental unit for two years and, and the damage the Landlord is claiming for is mostly just normal

wear and tear. The Tenant testified that she did agree that there was a hole in the wall from the door nob of the front door and that her children had put a small dent in the drywall in the basement of the rental unit. However, the Tenant also testified that they had not damaged the other areas of the rental unit that the Landlord is requesting compensation for in her claim. The Tenant testified that the damage the Landlord is claiming for was just normal wear and tear that should be expected when you rent to a family of eight. The Tenant also testified that she was unable to wash the scuffs off the walls of the rental unit, as when she attempted to clean the paint and plaster would wipe off the wall. The Tenant testified that the paint on the walls and the doors of the rental unit was very thinly applied or of poor quality and would flake off any time she attempted to clean.

The Landlord testified that she attended the rental unit the day after the move-out inspection and noticed that the windows were covered in streaks from, what she assumed to be a poor wash job by the Tenant. The Landlord testified that she had to pay \$150.00 to have a professional come in and clean the windows again. The Landlord testified that she had not noted the need for the additional window cleaning on the move-out inspection as she had not noticed the streaks at the time of the inspection.

The Tenant testified that she cleaned the windows in the rental unit at the end of the tenancy and that no additional cleaning was required.

### Analysis

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

I find that this tenancy ended in accordance with the *Act* on August 31, 2018, the date the Tenant and the Landlord conducted the move out inspection of the rental unit.

Section 37 (2) of the *Act* requires that a tenant return the rental unit reasonably clean and undamaged at the end of the tenancy.

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

**37 (2)** When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The Landlords' have claimed to recover their costs for losses associated with the condition of the rental unit at the end of tenancy. In order to determine any possible award, I must also refer to the Residential Tenancy Policy Guideline #1, Landlord & Tenant – Responsibility for Residential Premises, which states a Tenant must leave a rental unit reasonably clean and with only normal wear and tear, the guideline states as follows:

“The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).”

I have carefully reviewed the move-out inspection report, the pictures, and all documentary evidence provided in this case, and I find the move-in/move-out inspection report (the “inspection report”) to be the official condition of the rental unit at the beginning and the end of this tenancy.

The Landlords have claimed to recover \$1,023.75 in cost associated with repairing damage to the walls of the rental unit. I accept the agreed upon testimony of the parties to this dispute that the Tenants did put a hole in the wall at the front door and had put a dent in the drywall in the basement of the rental unit. However, I found the parties to this dispute offered conflicting verbal testimony regarding the remainder of the Landlord's claims of damage to the walls of the rental unit. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have reviewed the inspection report and the pictures submitted into evidence by the Landlords, and I find that several of the marks, dings, scratches and scuffs to the walls and doors that the Landlords are claiming as damage caused by this Tenant, were listed as pre-existing deficiencies on the move-in report.

I find that the Landlords have claimed to recover the cost of repairs for deficiencies to the wall and doors of the rental unit that pre-existed this tenancy. I also note that several

of the pictures the Landlords submitted into documentary evidence show normal wear and tear not damage as claimed by the Landlords.

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 find that the Tenant was in breach of section 37 of the *Act* for not repairing the hole in the wall at the front door and the dents in the drywall in the basement before the tenancy ended. However, I also find that the Tenant is not responsible for the repair costs of damage caused to the rental unit before this tenancy started or for the repair of areas that suffered normal wear and tear, which I find the Landlords have claimed for in their application.

I have reviewed the invoice for the repair work completed to the rental unit, and I note that the invoice does not breakdown the cost of each repair completed, but instead list one fee for repairing the entire rental unit.

The Landlords have claimed for the recovery of their costs for the repair the entire rental unit not just for the damage caused during this tenancy and in the absence of a breakdown of the work completed on the invoice submitted into evidence. I find that the Landlords have not proven the value of the damage or loss they suffered due to the Tenant's breach. Consequently, I dismiss the Landlords claim to recover \$1,023.75 in cost associated with repairing damage to the walls of the rental unit.

The Landlords have also requested to recover \$150.00 in costs associated with cleaning the windows of the rental unit. Section 37 of the *Act* requires that a tenant return the rental unit reasonably clean at the end of the tenancy. Again, I find that the parties to this dispute offered conflicting verbal testimony regarding the rental units needed for additional window clean at the end of this tenancy.

I have carefully reviewed the inspection report, and I find that there is no mention of the need for additional window cleaning in that document. As I have previously found that the inspection report represents the official condition of the rental unit at the end of this tenancy, and there is no mention of the need for window cleaning on that report. I find that the Landlords have failed to provide sufficient evidence to shows windows of the rental unit had not been returned to them in a reasonably cleaned state, or that additional cleaning had been required; consequently, I dismiss the Landlord's claim for the recovery of \$150.00 in window cleaning costs.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in her application, I decline to return the Landlords filing fee for this application.

As I have dismissed the Landlord claim, I order that the Landlord return the Tenant's security deposit to the Tenant, within 15 days of receiving this decision.

I grant the Tenant leave to apply for the return of double her security deposit if the Landlords fails to return the deposit as ordered.

### Conclusion

I dismiss the Landlord's claim, without leave to reapply.

I order the Landlord to return the security deposit to the Tenant, within 15 days of receiving this decision.

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 15, 2019

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Residential Tenancy Branch