



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

On September 13, 2018, the Landlord submitted an Application for Dispute Resolution for a monetary order for damage to the unit; to keep the security deposit; and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant attended the hearing. At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided 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 compensation for damage to the unit?
- Is the Landlord entitled to keep the security deposit?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy began on August 1, 2016, and was renewed on August 1, 2017, as a one year fixed term tenancy to continue thereafter on a month to month basis. The Tenants were to pay the Landlord monthly rent in the amount of \$1,100.00. The Tenants paid the Landlord a security deposit of \$550.00.

The Parties testified that the Tenant moved out of the rental unit on August 31, 2018. The parties met at the rental unit on September 1, 2018, and the Tenants returned the keys. The Landlord returned \$210.00 in cash from the security deposit to the Tenants.

The Landlord is requesting compensation for the cost to remove a wooden gate and the cost to repair an existing aluminium fence. The Landlord testified that the aluminium gate is approximately ten years old.

The Landlord testified that the Tenants asked for her for permission to install a wooden gate on the rental property. The Landlord testified that based on an agreement that the Tenants would remove the wooden gate and repair the holes in the aluminum posts at the end of the tenancy, the Landlord granted permission.

The Tenants installed the wooden gate which was affixed to two aluminum fence posts using two bolts into each post.

The Landlord testified that at the time of move out on September 1, 2018, she noted that the Tenants failed to remove the wooden gate and patch the holes. The Landlord provided photographs of the wooden gate and aluminum fencing.

The Landlord testified that she received a quote for the cost to remove the wooden gate and repair the aluminum posts. The Landlord provided a quote dated September 5, 2018, in the amount of \$682.50, for the cost to remove the wooden gate and install new aluminum posts and poles.

The Landlord testified that she had the work to remove the gate and repair the fencing completed on September 30, 2018.

The Landlord submitted an excerpt from the Residential Tenancy Branch Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises.

- 1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.*
- 2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.*

In reply, the Tenant Mr. G.T testified that the Landlord told the Tenant Mr. E.J. that the gate did not need to be removed at the end of the tenancy because the Landlord was planning to replace the fencing and gate.

The Tenant Mr. G.T questioned the repair costs and the need to replace the fence grills. The Tenant testified that the fence grills were not damaged or affected by the installation of the wooden gate. He testified that the only damage was two holes drilled into each aluminum fence post.

### Security Deposit

The Landlord applied for dispute resolution making a claim against the security deposit on September 13, 2018.

The Tenants testified that the Landlord returned \$210.00 from the security deposit to them on September 1, 2018.

The Landlord is holding a security deposit in the amount of \$340.00

The Tenant also submitted that the Landlord failed to conduct a move out inspection with them on September 1, 2018.

In reply, the Landlord testified that she met the Tenants at 12:00 on September 1, 2018 and she did not have an inspection form with her. When asked on two occasions if she conducted an inspection of the unit with the Tenants in attendance and completed a report on the condition and state of repair of the unit, the Landlord became evasive and would not directly answer my question. The Landlord provided a copy of a condition inspection report in her evidence; however, I note that the report was not completed correctly at the start of the tenancy and does not contain the signatures of the Tenants.

### Analysis

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

I find that the Landlord explicitly consented to that the Tenants could erect a wooden gate and attach it to the aluminum posts. I find that the agreement was for the Tenants to remove the gate and patch the holes when they moved out.

The parties are in agreement that the wooden gate was left in place at the end of the tenancy. I find that there is insufficient evidence from the Tenants to prove that the Landlord permitted them to leave the wooden gate at the end of the tenancy.

I find that the Tenants breached the agreement by failing to remove the wooden gate and patch the holes. I find that the Tenants are responsible for the cost of dismantling and disposing of the wooden gate, and for any costs to patch the holes.

I find that the Tenants are not responsible for the Landlord's decision to have the aluminum posts and grills replaced. There is insufficient evidence from the Landlord to support her submission that the holes could not be patched and that the posts and fence grills needed to be replaced. The Tenants are not responsible for the replacement costs.

I find that the Landlord has not proven the value of her loss because the estimate she provided does not break down the cost to dismantle the gate; dispose of it; and patch the holes.

The Residential Tenancy Policy Guideline # 16 Claims in Damages provides:

*An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.*

*An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:*

*"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

*A party seeking compensation should present compelling evidence of the value of the damage or loss in question.*

After considering the evidence before me and the policy guideline, find that the Landlord is entitled to a minimal award

I award the Landlord the amount of \$100.00 due to the Tenants breach of the agreement.

### Security Deposit

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. 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.

I find that the Landlord failed to perform a move out inspection of the rental unit with the Tenants at the end of the tenancy as required by the Act and tenancy Regulation. Consequently, the Landlord's right to apply to keep the security deposit is extinguished.

The Tenants are awarded the return of the security deposit in the amount of \$340.00.

While the Landlord's right to apply against the deposit is extinguished, the Landlord retains the right to apply for compensation for damage or loss. An arbitrator may use a security deposit to set off claims.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with her claim, and since I find that the Tenants breached an agreement, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Landlord has established a monetary claim in the amount of \$200.00. After setting off the Landlord's award of \$200.000 against the Tenants' award of \$340.00, I order the Landlord to immediately return the balance of \$140.00 to the Tenants.

I grant the Tenants a monetary order in the amount of \$140.00. The monetary order must be served on the Landlord and may be enforced in the Provincial Court.

### Conclusion

The Landlord was partially successful on her claim for compensation.

After setting off the Landlord's award of \$200.000 against the security deposit of \$340.00, I order the Landlord to immediately return the balance of \$140.00 to the Tenants.

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 18, 2019

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Residential Tenancy Branch