



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, FF

### Introduction

This hearing was convened in response to an application made December 3, 2018 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The following are agreed facts: The tenancy, under written agreement, started on November 1, 2105 and the Tenants moved out on October 28, 2018. At the outset of the tenancy the Landlord collected \$425.00 as a security deposit. Rent of \$950.00 was payable on the first day of each month. The Landlord received the Tenants’ forwarding address on November 2, 2018 by text and on November 15, 2018 by letter. No move-in or move-out condition inspections with completed reports were done. During the tenancy the Parties communicated only by text and in person.

The Landlord states that the full security deposit was returned to the Tenants on December 1, 2018 and that the exact date that the security deposit was sent cannot be

recalled. The Tenant states that they received the security deposit by regular mail a couple of days after December 1, 2018. The Landlord states that he did not deal with the security deposit sooner as the Parties were in negotiations about the repair of damages left in the unit.

The Landlord states that the Tenants left the walls in every wall of the unit with damage by nail and screw holes. The Landlord states that the Tenants patched the walls by the move out date and that the Landlord agreed that the Tenants would also follow-up and paint the walls with matching colors. The Landlord states that while the Tenants painted the patches some walls were not painted. The Landlord states that the paint also did not completely match. The Landlord states that he hired a painter to complete the painting and that only one coat of paint was required. The Landlord states that the walls were last painted in 2013. The Landlord claims \$693.00 as the costs to paint the unit.

The Tenant states that in addition to the holes left by the Tenants they also patched holes that were left in the unit by the previous tenants. The Tenant argues that they were not responsible for painting the walls but that they felt forced by the Landlord to paint the entire unit. The Tenant argues that they are not responsible for normal wear and tear on the paint and states that it was time for a paint job by the end of the tenancy as the paint had become faded. The Tenant states that because the paint was faded they were unable to make a perfect match using the same original color paint. The Tenants do not waive any right to return of double the security deposit.

### Analysis

Section 23 of the Act requires that at the start of a tenancy, the landlord must offer at least two opportunities to conduct an inspection of the unit, the landlord and tenant must together inspect the condition of the rental unit, and the landlord must complete a condition inspection report in accordance with the regulations. Section 24(2) of the Act provides that where a landlord has not made any offers for the inspection and does not complete and give the tenant a copy of a condition inspection report, the right to claim

against that deposit for damage to the residential property is extinguished. Based on the agreed facts that a move-in condition inspection and report was not done I find that the Landlord's right to retain the security deposit was extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides that the security deposit will be ordered returned whether or not the tenant has applied for its return. Based on the Landlord's evidence that the forwarding address was received no later than November 15, 2018 and as the Landlord's right to claim against the security deposit was already extinguished, I find that the Landlord had until no later than November 30, 2018 to repay the Tenants with the full security deposit. As the Landlord's evidence of the date the Tenants were sent the return of the security deposit is vague and noting that the Landlord did not dispute that the security deposit was sent by regular mail, I prefer the Tenants' evidence and find on a balance of probabilities that the Landlord did not repay the security deposit to the Tenants until a few days after December 1, 2018. As this repayment was not within the time allowed and despite the Tenants not having made an application to claim the return of double the security deposit, I find that the Landlord must now repay the Tenants double the security deposit plus zero interest of \$850.00. Deducting the \$425.00 that the Tenants have already received leaves **\$425.00 owed to the Tenants.**

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Section 37 of the Act provides, inter alia,

that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Policy Guideline #40 provides that the useful life of indoor paint is 4 years. Based on the Landlord's evidence that the unit was last painted in 2013, I find that by the end of the tenancy there was no longer any useful life left to the indoor paint, that any damage to the paint left by the Tenants was only wear and tear, and that the Landlord has not substantiated that the Tenants breached the Act causing any loss to the Landlord. As a result I find that the Landlord is not entitled to the costs to paint the unit and I dismiss the claim. As the Landlord's claim has not been successful I decline to award recovery of the filing fee and in effect the Landlord's application is dismissed.

#### Conclusion

The Landlord's application is dismissed.

I grant the Tenants an order under Section 67 of the Act for **\$425.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: March 26, 2019

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Residential Tenancy Branch