



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MND MNDC MNSD FF

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. The male tenant was not in attendance. The landlord testified that they served the Application for Dispute Resolution dated December 28, 2018 on the tenant by registered mail and the tenant acknowledged receiving it. I find the documents were legally served pursuant to section 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

### **Issue(s) to be Decided:**

Has the landlord proved on a balance of probabilities that the tenant damaged the property and that it was beyond reasonable wear and tear? What is the cost of the losses incurred by the landlord? Is the landlord entitled to recover the filing fee?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. Both parties submitted considerable evidence online. The parties agreed the tenancy commenced October 15, 2014, that monthly rent was \$1500 when they vacated on June 31, 2018 and a security deposit of \$725 was paid in October 2014. The landlord said that the tenant was given 2 weeks free rent at commencement of the tenancy for the previous tenants left garbage and the home required cleaning.

The landlord said the home was painted six months prior to the tenants moving in on October 15, 2014 and it was neutral colours.

The landlord supplied photographs as evidence of the damage and some invoices. He said he was surprised that the tenants painted the rooms in bold, bright colours and did not return the rooms to their original neutral colours when they left. The tenant said there were holes in the walls and they painted with paint that was on sale. They said the landlord said he would compensate them but never did. When they tried to take some rent as compensation, he threatened eviction. The female tenant said she got no message asking her to restore the rooms to their original paint colour although the landlord said he sent one to her male partner.

The landlord also claims for a shower head that the male tenant told him he lost and a motion sensor light that was taken. The female tenant witness said the landlord supplied no visual evidence as witness of the missing items and she does not know what use they would have for them or reason for taking them. She did remember that the male tenant had put a new shower head on but she said the old one would likely be under the bathroom sink and she did not see the male tenant removing the sensor light.

The landlord claims as follows:

\$5985: for painting the home using 3 coats to cover the bright colours. He estimated the extra coats would likely each represent 20% of the total.

2. \$100 for a shower head that was about 5 years old; no receipt but gave the name of a company and cost.

3. \$75 for a missing motion sensor that was about 3 1/2 years old; no receipt.

In evidence is the painting receipt, many photographs, statements from the female tenant, and a condition inspection report signed at move-in by the female tenant but not signed at move-out. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

### **Analysis**

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that this tenant caused some damage, largely illustrated in pictures of bold colours on walls. I find the evidence is that the original neutral paint done 44 months before move-out. The *Residential Policy Guideline 40* assigns a useful life for items in rented premises which is designed to account for reasonable wear and tear. Paint is assigned a useful life of 48 months (4 years). I find the paint in the subject premises had only 9% of its useful life remaining so I find the landlord would normally be entitled to compensation of \$538.65 of the cost if the paint had only needed one or two coats of the original neutral colour. I find the weight of the evidence is that due to the very bold colours used by the tenants, it required an extra coat costing an additional 20% or \$1197. I find the need for the painting and cost is supported by statements, photographs and an invoice. Although the tenant said the paint and walls were in bad shape when they moved in, I find the condition inspection report and her photographs do not support her allegations. I find her photographs showed a lot of furniture and garbage in the home but the walls appeared to be fine and were painted in a neutral colour. I find the landlord entitled to recover \$1197 compensation for painting.

In respect to his claim for a shower head and missing sensor light, I find these were listed on the move-out report. The landlord's evidence was that the shower head was about 5 years old and cost \$100 and the motion sensor light was 3 and a half years old and cost \$75. I find his evidence credible as he described the items and the supplier. The tenant was unable to testify what happened to them but she did remember the male tenant replacing the shower head which supports the landlord's credibility. I find the Guideline assigns a useful life of 15 years to such items. Therefore I find the landlord entitled to recover \$66 for the shower head for the 10 years of useful life remaining and \$57.49 for the motion sensor for the 11 and one half years of useful life remaining.

Although the tenant emphasized the poor condition of the premises at move-in, I find the landlord compensated them for cleaning with two weeks free rent and I find the photographs mainly showed that cleaning was needed.

**Conclusion:**

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

**Calculation of Monetary Award:**

Compensation allowed for repainting	1197.00
Compensation allowed for shower head	66.00
Compensation allowed for motion sensor	57.49
Filing fee	100.00
Less security deposit (no interest)	-725.00
<b>Total Monetary Order to Landlord</b>	<b>695.49</b>

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: April 16, 2019

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Residential Tenancy Branch