



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on March 12, 2019 for:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order for unpaid rent or utilities - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on April 22, 2019 for:

1. A Monetary Order for compensation or loss - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord 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?

Is the Tenant entitled to the monetary amounts claimed?

### Background and Evidence

The following are agreed facts: The tenancy under written agreement started on March 1, 2019 for a fixed term to end February 29, 2020. Rent of \$2,350.00 was payable on

the first day of each month. At the outset of the tenancy the Landlord collected \$1,175.00 as a security deposit. No move-in inspection was offered to the Tenant. The Tenant was given the keys to move into the unit on February 27, 2019 without any rental charge for February 2019. The Tenant did not pay any rent on March 1, 2019 and moved out of the unit on March 2, 2019. The Tenant provided its forwarding address to the Landlord by sending it registered mail on March 5, 2019. The Landlord collected the mail on March 10, 2019.

The Landlord claims unpaid rent for March 2019. The Tenant states that no rent was paid because work was still being done on the unit by the Landlord.

The Landlord claims a rental agent commission of \$1,175.00 as the fees paid to re-rent the unit. The Landlord stated repeatedly, after several opportunities given for clarification, that nothing in the Act or tenancy agreement required the Tenant to pay a re-rental fee or commission. The Landlord states that this fee is being claimed as the Landlord lost an additional half a month of rental income and had to look for new tenants. The Landlord states that new tenants were obtained by March 10, 2019 for a tenancy start date of April 15, 2019 at the same rental rate. The Tenant states that nothing requires the Tenant to pay the rental agent's commission or re-rental fee.

The Landlord states that the Tenant requested that the Landlord remove wall paper and paint the unit before the move-in date. The Landlord states that despite the unit being in good condition the Landlord agreed to paint the unit and remove the wall paper. The Landlord states that they did not want the Tenant to remove the wall paper and so asked the painters to carry out this job. The Landlord states that nothing was wrong with the wall paper that otherwise could have been painted over. The Landlord claims \$2,500.00 for painting and \$800.00 for the removal of the wall paper. The Tenant states that the wall paper was damaged and the walls were in bad condition when it was viewed. The Tenant states that the repairs to the walls were a condition of accepting

the tenancy and that when the Landlord agreed to this when the Tenant paid the security deposit at the end of January 2019.

The Tenant claims the registered mail costs for sending her forwarding address to the Landlord.

The Tenant states that the painting started on February 27, 2019 and by May 1, 2019 was still not complete. The Tenant states that the painters informed the Tenant that it would take another week before they were done. The Tenant states that the painters did not have any key to the unit so the Tenant had to give them her key to enter the unit. The Tenant states that the workers were in the unit full days. The Tenant argues because the unit was still being painted it was uninhabitable and that the Tenant lost her right to quiet enjoyment of the unit. The Tenant states that other minor repairs were required and that the Tenant became concerned with the tenancy. The Tenant states that she then made the choice to move out of the unit. The Tenant claims moving costs, hydro costs and meal costs for the ending of the tenancy due to the Landlord's actions. The Tenant states that the only room she had for use was her bedroom and that by May 1, 2019 the only room painted was the kitchen. The Tenant argues that the Landlord had sufficient time prior to the move-in date to complete the repairs. The Landlord states that the painters started as soon as they were available.

### Analysis

Section 7 of the Act provides that where a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the landlord or tenant must compensate the other 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. As there is no evidence that the Tenant was required either under the Act or the tenancy agreement to pay for the Landlord's costs of painting the unit, and based on undisputed evidence that

the Landlord agreed to remove the wall paper and paint the unit as a condition of the tenancy, I find that the Landlord has not substantiated that the Tenant breached the Act or the tenancy agreement and I dismiss the claim for painting and wall paper removal costs.

Although the Landlord did not provide any oral evidence of any term of the tenancy agreement that requires the Tenant to pay a re-rental fee or rental commission, I note that the tenancy agreement addendum appears to provide for a variety of “penalties” for re-renting the unit. However as the Landlord did not point to this or any other section of the tenancy agreement as the basis for claiming the re-rental fee and as the relevant addendum sections are set as penalties, I find that the Landlord has not substantiated that the Tenant breached any valid term of the tenancy agreement and that this breach caused a loss. I therefore dismiss the claim for \$1,175.00.

Although the Landlord did not have the unit ready for occupancy on May 1, 2019, I do not consider that by painting in order to improve the unit it became uninhabitable. I also consider that the Tenant made a choice to move out of the unit when other options could have been available to mitigate her loss, such as seeking compensation for the lack of repairs, temporary loss of use of the unit, or for a loss of privacy or peaceful enjoyment. I therefore dismiss the Tenant’s claim for moving costs, hydro costs and meal costs associated with her choice to move out of the unit.

As nothing in the Act or the tenancy agreement provides for the Tenant to be compensated for sending the Landlord a request to return the security deposit I dismiss the Tenant’s claim for the mailing costs to send the request.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Regardless of the Landlord not complying with the agreement to complete the painting prior to the move-in date, based on the

undisputed evidence that the tenancy agreement required the Tenant to pay the rent for March 2019 on March 1, 2019 I find that the Landlord has substantiated its claim for **\$2,350.00**. The Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,450.00**. Deducting the security deposit plus zero interest of **\$1,175.00** from this entitlement leaves **\$1,275.00** owed by the Tenant to the Landlord.

As the Tenant's security deposit has been used to offset the amount owed to the Landlord I find that there is no security deposit remaining to return to the Tenant. I therefore dismiss the Tenant's claim for return of the security deposit. As none of the Tenant's claims have been successful I decline to award recovery of the filing fee to the Tenant and in effect the Tenant's application is dismissed in its entirety.

#### Conclusion

The Tenant's application is dismissed.

I Order the Landlord to retain the security deposit plus interest of \$1,175.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining **\$1,275.00**. 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: May 22, 2019

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Residential Tenancy Branch