



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This was a cross-application hearing for Dispute Resolution under the Residential Tenancy Act ("the Act"). The matter was set for a conference call hearing.

On February 6, 2019, 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.

On February 12, 2019, the Tenant submitted an Application for Dispute Resolution for money owed or compensation for damage or loss; for the return of the security deposit; and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Landlords and Tenant attended the hearing. At the start of the hearing I introduced myself and the participants. The Landlords 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

- Are the Landlords entitled to compensation for damage to the unit?
- Are the Landlords entitled to keep the security deposit in full or partial satisfaction of the claim?
- Is the Tenant entitled to money owed or compensation for damage or loss?

### Background and Evidence

The parties testified that the tenancy commenced on June 1, 2017, as a one year fixed term tenancy. The Tenant is to pay the Landlord monthly rent in the amount of \$1,768.00 by the first day of each month. The Tenant paid the Landlord a security deposit of \$850.00. The Landlord provided a copy of the tenancy agreement.

### Landlord's Application

The Landlord is requesting compensation for the following items:

Painting	\$1,428.00
New Refrigerator	\$794.00
Repairs and Cleaning	\$300.00

### Painting \$1,428.00

The Landlord testified that he removed a wall on January 27<sup>th</sup> and 28<sup>th</sup> and noticed that there were holes in the walls and baseboards of the rental unit. The Landlord testified that the walls were damaged, marked and stained. The Landlord testified that he hired someone to repaint the walls. The Landlord provided an invoice dated February 13, 2019 in the amount of \$1,428.00. The Landlord testified that the rental unit was new as of June 2017, and had never been occupied prior.

The Landlord provided digital video recordings and photographs showing the condition of the unit, including the walls prior to the tenancy and the condition of the unit and walls at the end of the tenancy. The video recordings taken at the end of the tenancy are dated January 28<sup>th</sup> and January 29<sup>th</sup>.

In reply, the Tenant testified that she still had three days to clean, and repair and paint the walls.

The Tenant testified that the Landlord asked her to attend an inspection of the rental unit on January 28<sup>th</sup>. The Tenant attended the unit; however the Landlord did not perform an inspection and complete a condition inspection report with her. She testified that the Landlord never provided her with a copy of a condition inspection report. She testified that the Landlord asked if they could remove a wall and the Tenant agreed.

The Tenant submitted that when she returned to the rental unit on January 29<sup>th</sup> to finish the cleaning she discovered that she was locked out of a portion of the unit. She

testified that she only had access to the kitchen and the two bedrooms. She testified that the door that separates the rest of the unit was locked by a deadbolt. She testified that the Landlord informed her that they have already taken over possession of that part of the unit.

The Tenant testified that on January 29<sup>th</sup> the Landlord had already completed the repairs to the walls in preparation for painting the rental unit.

In reply, the Landlord testified that they locked the Tenant out of a portion of the unit because the wall had come down and they did not want to give access to the Landlords suite.

The Landlord provided testimony confirming that the repairs to the walls were performed on January 27<sup>th</sup> and 28<sup>th</sup>.

The Landlord provided testimony confirming that the Landlord did not provide the Tenant with a copy of a condition inspection report.

Refrigerator \$794.00

The Landlord testified that at the end of the tenancy there were two cracks discovered in the fridge. The Landlord has not replaced the fridge and had provided a quote for the replacement cost. The Landlord confirmed that the fridge is still working and remains in the unit being used by new Tenants. The Landlord provided photographs of the damaged fridge.

In reply, the Tenant testified that she has no idea what the Landlord is talking about. She testified that the Landlord never mentioned any issue with the fridge. The Tenant testified that she cleaned the fridge at the end of the tenancy and did not notice any cracks.

Repairs and Cleaning \$300.00

The Landlord testified that he paid his brother in law \$300.00 to patch the holes in walls and clean the rental unit. The Landlord testified that his brother in law worked approximately 7- 8 hours. The Landlord did not provide a receipt.

In reply, the Tenant testified that there were a few screw holes and pin holes and holes for the TV mount; however, she was not given an opportunity to patch the walls because the Landlord completed the repairs prior to the end of her tenancy.

The Tenant testified that she still had four days to clean and repair the unit.

### Security Deposit

The Landlord applied to keep the security deposit of \$850.00 in partial satisfaction of the claim for damage.

### Tenant's Application

The Tenant testified that "wifi" is included in the rent. The Tenant testified that she raised the issue of "wifi" with the Landlord during the first week of the tenancy.

The Tenant testified that she purchased a "wifi" extender to magnify the signal and that improved the service for a couple of months. The Tenant testified that the extender stopped working after a couple of months.

The Tenant testified that she again raised the issue with the Landlord in August or September.

The Tenant is seeking compensation because the "wifi" in the unit did not work properly. The Tenant testified that her children started using their personal data on their cell devices. The Tenant is seeking \$400.00 in compensation.

In reply, the Landlord testified that he is not in agreement that the Tenant is entitled to any compensation.

The Landlord testified that after he received the complaints from the Tenant he called the service provider who informed him that using the "wifi" for gaming slows the internet bandwidth. He testified that his son and the Tenant's son were using the internet "wifi" for gaming.

The Landlord testified that the Tenant's purchase of the "wifi" extender was without his knowledge or agreement to reimburse her.

The Landlord testified that he purchased an extender at a cost of \$300.00 and the Tenant was happy. He testified that he ran a test on the signal speed and the speed was adequate.

### Analysis

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. Section 36 of the Act provides that the right of a Landlord to claim against a security deposit is extinguished if the Landlord fails to perform an inspection with the Tenant and does not complete the inspection report and give the Tenant a copy of it in accordance with the regulations.

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

*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.*

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises provides:

*a tenant is 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.*

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

### Landlords Application

## Painting

The Landlord is responsible to periodically paint the interior of a rental unit.

Residential Tenancy Branch Policy Guideline #40 Useful Life of Building Elements is a general guide for determining the useful life of building elements for considering applications and determining damages. When applied to damage(s) caused by a Tenant, or the Tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. The Guideline provides that the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the Tenant's responsibility for the cost or replacement.

The Guideline provides that the useful life of interior paint is 4 years.

The Landlord's invoice dated February 13, 2019, provides that the cost for repairs is \$280.00 and the cost for painting is \$1,080.00. I find that the rental unit was last painted in June 2017; which is 19 months after it was previously painted.

I find that the Landlord performed repairs to the unit prior to the end of the tenancy. I find that the Landlord did not provide a full opportunity for the Tenant to perform repairs. I also find that the Tenant was locked out of portions of the rental unit and could not perform repairs. I also find that the Landlord's video evidence was recorded prior to the Tenant having a full opportunity to clean and repair the rental unit. For this reason, the Landlord's claim to recover the cost of \$280.00 for the wall repairs is dismissed.

I find that there was damage to the walls made by screw holes and a television mount and that the Tenant is responsible for the cost to paint the repaired walls.

After considering the useful life remaining for the interior paint, I find that Tenant is responsible for a 29/48 share of the cost of the painting the unit ( $\$1080 / 48 \text{ months} = \$22.50 \times 29 \text{ months} = \$652.50$ ). after including the 5% tax I find that Tenant owes the Landlord the amount of \$685.12. I am further reducing the Landlord's award by 50% because the Landlord locked the Tenant out of part of the rental unit as of January 29, 2019.

I award the Landlord the amount of \$342.56 for painting costs.

### Refrigerator

I award the Landlord a nominal award of \$50.00 for the refrigerator. I find that the refrigerator is still working and is being used by new Tenants. I find that the cracks on the fridge are minor and only affect the fridge cosmetically. The Landlord has provided insufficient evidence that they are entitled to the full replacement cost for the refrigerator. I award the Landlord a nominal amount of \$50.00 due to the cracks in the refrigerator.

### Repairs and Cleaning

The Landlord's claim to recover \$300.00 for the cost of repairs and cleaning is dismissed. I find that the Landlord performed repairs to the unit prior to the end of the tenancy. I find that the Landlord did not provide a full opportunity for the Tenant to perform repairs. I also find that the Tenant was locked out of portions of the rental unit and could not perform repairs. I also find that the Landlord's video evidence was recorded prior to the end of the tenancy and prior to the Tenant having a full opportunity to clean and repair the rental unit. The Landlord's photograph showing a clean but cracked fridge appears to have been taken on January 30, 2019, prior to the end of the tenancy. The Tenant testified that she cleaned the unit including the fridge.

### Security Deposit

I find that the Landlord failed to complete a condition inspection report with the Tenant when they met on January 27<sup>th</sup>. I find that this was not the end of the tenancy because the Tenant continued to have access to the unit and entered on January 29<sup>th</sup> for the purpose of performing cleaning and repairs. At this time the Landlord informed the Tenant that they had taken over part of the rental unit. I find that the Landlord did not conduct a proper move out inspection with the Tenant as required by the Act. I find that the Landlord's right to claim against the security deposit is extinguished.

The Landlord is required to return the security deposit of \$850.00 to the Tenant; however the Landlord retained the right to make monetary claims against the Tenant for damages.

I award the Tenant the amount of \$850.00 for the security deposit. Pursuant to section 72 of the Act this amount can be applied to any successful claims awarded to the Landlord.

### Tenant's Application

The Tenant's claim for compensation due to a loss of internet "wifi" service is dismissed. The Tenant is not entitled to recover the purchase cost of the "wifi" extender because there was no discussion and agreement with the Landlord prior to the purchase. I find that the Landlord is not responsible for a restriction of the service of internet and "wifi".

The Tenant's own evidence suggests that there was a wifi signal present. The "wifi" extender picked up the signal and strengthened it. While I find that the tenancy agreement includes the service of internet, there is no term or condition that the Landlord must provide a high speed level of internet that supports gaming.

I find that there is insufficient evidence from the Tenant to establish that she suffered a restriction or loss of a service that is included in the rent.

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 their application, I order the Tenant 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 \$492.56 comprised of painting costs, damage to a fridge, and the cost of the filing fee.

I authorize the Landlord to withhold the amount of \$492.56 from the security deposit of \$850.00. I order the Landlords to repay the amount of \$357.44 to the Tenant.

I grant the Tenant a monetary order in the amount of \$357.44. The monetary order must be served on the Landlord and may be enforced in the Provincial Court.

### Conclusion

The Landlord established a monetary award in the amount of \$492.56 comprised of painting costs, damage to a fridge, and the cost of the filing fee.

The Tenant was awarded the return of the security deposit in the amount of \$850.00.

I authorize the Landlord to withhold the amount of \$492.56 from the security deposit of \$850.00. I order the Landlords to repay the amount of \$357.44 to the Tenant.



I grant the Tenant a monetary order in the amount of \$357.44. The monetary order must be served on the Landlord and may be enforced in the Provincial 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 *Residential Tenancy Act*.

Dated: June 5, 2019

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Residential Tenancy Branch