



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BOLLD REAL ESTATE MANAGEMENT  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      MND, MNSD, FF

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property, to retain the Tenants' security and pet deposits and to recover the filing fee for this proceeding.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on April 15, 2019. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is there damage to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation for damage and if so how much?
3. Is the Landlord entitled to retain the Tenants' security and pet deposits?

### Background and Evidence

This tenancy started on June 1, 2015 as a 1 year fixed term tenancy with an expiry date of May 31, 2016 and then renewed on a month to month basis. Rent was \$2,340.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$1,100.00 at the start of the tenancy and a pet deposit of \$1,100.00 in two installments during the tenancy. The tenancy ended on April 1, 2019. A condition inspection report was completed at the end to the tenancy but no report was completed at the start of the tenancy. The Landlord said the unit was new at the start of the tenancy and he did not know why a move in condition inspection report was not done.

The Landlord said after the tenancy ended and new tenants were to move into the unit the Landlord discovered damages to the unit caused by the Tenants. These damages were not indicated as the Tenants responsibility on the move out condition inspection report, but the Landlord said the Tenants caused the damage during their tenancy. The Landlord continued to say he is requesting \$863.52 for carpet replacement, \$157.20 for extra cleaning and \$125.00 for painting services. The Landlord said his total claim is for \$1,145.72 plus the \$100.00 filing fee.

The Tenant responded to the Landlord's application by saying that the Landlord's representative R.F. told them the unit was in good condition and they had no responsibilities for any repairs or cleaning. The Tenant said agent R.F. was happy with the condition of the unit and the move out condition inspection report completed April 1, 2019 confirms this. Further the Tenant said they hired a professional carpet cleaner for the carpets and a professional cleaner to clean the unit prior to them leaving. With regards to the painting the Tenant said they filed the wall hole and purchased paint, but the Landlord D.L. wrote her a text message (submitted in evidence) stating he would cover the cost of the painting service. The Tenant said it was her understanding they were the first tenants in the unit, but she does not believe they are responsible for the damages. The Tenant said the move out condition inspection report completed on April 1, 2019 indicates the Landlord's representative R.F. was satisfied with the condition of the rental unit and she sign off on it. The Tenant said they thought they had done what were their responsibilities in leaving the rental unit.

The Tenant said in closing that they thought they had done what was required of them at the end of the tenancy. The Tenant continued to say the Landlord signed off on the move out condition inspection report, so the Tenant does not believe they own the Landlord any compensation for damages.

The Landlord said in closing there are damages to the unit in the amount of \$1,145.72 that were caused by the Tenants. The Landlord said he is requesting that these costs be awarded to him.

### Analysis

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

Condition inspection: start of tenancy or new pet

Section 23 of the Act says: (1) **The 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 or on another mutually agreed day.**

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) **The landlord must complete a condition inspection report in accordance with the regulations.**

(5) **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.**

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

Consequences for tenant and landlord if report requirements not met

Section 24 of the Act says: (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

- (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 23 (3) [2 opportunities for inspection],
  - (b) having complied with section 23 (3), does not participate on either occasion, or
  - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.**

The Landlord said the unit was new at the start of the tenancy and he did not know why a condition inspection report was not done. The Landlord said these were the first tenants in the unit. As well the Tenant said she understands they were the first tenants in the unit but there was no move in report completed. I accept from the testimony that the rental unit was new, but this does not negate the requirement for a move in condition inspection report as there could have been deficiencies in the unit. The reason for condition inspection reports is to have both parties agree on the condition of the rental unit at the start and end of the tenancy. Further the Landlord's representative completed a move out condition inspection report and did not indicate on the report that the Tenants had any responsibilities for the condition of the unit. I accept the Tenant's testimony and the move out condition inspection report that the Tenants left the unit in a condition that was acceptable to the Landlord's agent. As such, I find the Landlord has not established grounds to prove the Tenants are responsible for the damage that the Landlord is claiming in his application. The Landlord's representative R.F. accepted the condition of the rental unit on April 1, 2019 during the move out condition inspection report. Therefore, I dismiss the Landlord's application without leave to reapply.

Further as the Landlord was not successful in this matter I dismiss his application to recover the filing fee of \$100.00 from the Tenants.

Conclusion

The Landlord's application is dismissed without leave to reapply.

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: July 15, 2019

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Residential Tenancy Branch