



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

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

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

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

### Issue(s) to be Decided

Has the Landlord’s right to claim against the security deposit been extinguished?

Is the Landlord required to pay the Tenant double the security deposit?

Is the Landlord entitled to the costs claimed?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed or undisputed facts: The tenancy started on October 16, 2016. At the outset of the tenancy the Landlord collected \$700.00 as a security deposit and \$200.00 as a pet deposit. Rent of \$1,400.00 was payable on the first day of each month. The Tenants moved out of the unit on May 1, 2019. The Parties mutually conducted a move-in inspection with an inspection report completed. The Tenant

copied the move-in report by taking photos. No move-out inspection was offered by the Landlord. The Landlord sold the unit in July 2019.

The Landlord states that the Tenant's forwarding address was probably received a week to 10 days after move-out. The Tenant states that the forwarding address was provided by registered mail on May 5, 2019 and was received by the Landlord on May 9, 2019.

The Landlord states that no move-out inspection was offered as the Tenant was late moving out of the unit and the Landlord was rushed. The Tenant states that the Landlord went through the unit at move-out and made complaints to the Tenant but that no mutual inspection was offered, and no report was completed or offered to the Tenant for signature.

The Landlord states that the Tenant left the unit windows and baseboards unclean at the end of the tenancy and that the carpet required steam cleaning due to a urine smell. The Landlord states that both a cleaning person and the Landlord did the cleaning. The Landlord claims \$100.00. No invoice was prepared. The Tenant states that the unit was left reasonably clean and provides photos. The Tenant states that the carpets were steam cleaned at the end of the tenancy and provides a receipt for the cost of the cleaner.

The Landlord states that the Tenant did a poor job of painting the unit. The Landlord states that it agreed that the Tenant could paint the unit during the tenancy. The Landlord states that the Tenant assured the Landlord that a professional painting friend would assist the Tenant. The Landlord states that no instructions or supervision of the paint job was undertaken by the Landlord. The Landlord states that the only costs incurred to repair the damage were those of the Landlord's time and expenses for the materials. The Landlord claims \$300.00. The Landlord provides no receipts or invoices for this claim. The Landlord provides photos. The Tenant states the paint job was not

bad and that the Landlord paid no monies for either the Tenant's labour or the cost of paint supplied. The Tenant states that it incurred over \$600.00 to paint the unit. The Tenant does not waive any entitlement to return of double the security and pet deposit.

### Analysis

Section 37 of the Act provides 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. 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 21 of the Residential Tenancy Branch (the "RTB") Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. There is no move-out condition report detailing the state of the unit. No images can be seen from the Landlord's photos, other than one photo faintly depicting a wall. The Landlord provided no supervision for the painting of the unit. The Landlord incurred no costs for the painting of the unit by the Tenant. The Landlord provided no supporting evidence of any supply costs incurred by the Landlord and no invoice setting out any labour time or hourly rate to repair the paint job. The Tenant disputes that the painting was poorly done. The Tenant has provided photos showing a reasonably clean unit. The Landlord provided no invoice for the cleaning costs claimed. For these reasons I find on a balance of probabilities that the Landlord has not substantiated any of the damage, losses or costs claimed. I therefore dismiss the claims totalling \$400.00. As the Landlord's claim have not met with success I find that the Landlord is not entitled to recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

Section 35 of the Act provides, inter alia, that a landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day, and the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Section 36(2) of the Act provides that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer 2 opportunities for an inspection. Based on the undisputed evidence that no offer for a move-out inspection was made, I find that the Landlord's right to claim against the security and pet deposit for damages to the unit was extinguished at move-out. Because of this extinguishment the Landlord was required to return the security and pet deposits to the Tenant.

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. RTB Policy Guideline #17 provides that return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act. There is no dispute that the Tenant provided its forwarding address to the Landlord. As the Landlord's right to claim against the security deposit was extinguished at move-out and as the Landlord did not return the security and pet deposit after receiving the forwarding address, I find that the Landlord must now pay the Tenant double the combined security and pet deposit plus zero interest in the total amount of **\$1,800.00**.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$1,800.00**. 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 RTB under Section 9.1(1) of the Act.

Dated: August 23, 2019

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Residential Tenancy Branch