



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FFL

### 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 May 23, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for a monetary order for damage to the unit; to keep the security deposit; and to recover the cost of the filing fee.

On June 24, 2019, the Tenants applied for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; and for the return of the security deposit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during 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.

### Preliminary and Procedural Matters

The Tenants did not provide any documentary evidence in support of their application or in response to the Landlord's application. At the start of the hearing the Tenant requested an adjournment so that she could have an opportunity to submit documentary evidence in response to the Landlord's evidence and to provide evidence from a walk

through inspection. The Tenant testified that she was in a car accident in May 2019, and suffered a concussion. The Tenant testified that she was also dealing with a situation where her daughter, who was on vacation, was returned to her 11 days late. In addition, the Tenant testified that from August 17, 2019, to September 1, 2019 she was out of the province.

In response to the Tenant's request for an adjournment, the Landlord testified that he served his Notice of Dispute Resolution Proceeding documents on May 29, 2019. The Landlord submitted that the Tenant has had months to prepare to respond to the claims.

I find that the Tenant has had a reasonable opportunity to provide evidence for her own claim and to prepare a response to the Landlord's claims. In addition, the Landlord's claims for damage or repair are minor and the Tenant can provide a direct testimony in response to the claims.

The Tenant's request for an adjournment was denied. The hearing proceeded.

The Landlord testified that his documentary evidence was sent to the Tenant using registered mail on August 16, 2019. The Tenant testified that she did not have an opportunity to pick up the Landlord's documentary evidence prior to the hearing. I find that the Landlord's evidence was served in accordance with the Act and the rules of procedure and the Tenant simply neglected to pick up the evidence. The Act provides that documents sent using registered mail are deemed received after 5 days. The Landlord's evidence is accepted and will be considered.

During the hearing the Tenant withdrew her claim against the Landlord for \$5,000.00 for money owed or compensation for damage or loss. The Tenant's claim for the return of the security deposit proceeded.

During the hearing the Landlord withdrew a claim for the cost to repair a mis-aligned cabinet door.

#### Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit?
- Is the Landlord entitled to keep the security deposit towards his claims?

#### Background and Evidence

The Landlord and Tenant testified that the tenancy began on April 15, 2018, as a one year fixed term tenancy. Rent in the amount of \$1,500.00 was to be paid to the

Landlord each month. The Tenant paid the Landlord a security deposit in the amount of \$750.00. The parties testified that the Tenants moved out of the rental unit at the end of March 2019.

#### Landlord's Application

The Landlord is seeking compensation for the following items:

Smoke Detector	\$28.53
Bug Screen	\$10.00
Bi fold door	\$35.00
Crawlspace Door	\$29.17
Furnace Room Door	\$5.83
Closet Shelf Anchor	\$5.83
Smoke Detector Installation	\$40.83

#### Smoke Detector

The Landlord testified that the Tenant is responsible for a smoke detector that was removed from the ceiling. The Landlord testified that the smoke detector had been taken down and put aside because the alarm would sound when the Tenant was cooking. The Landlord testified that he called the vendor and determined that the detector was bad because it malfunctioned when the tenant cooked.

The Landlord purchased a new smoke detector. The Landlord testified that the Tenant may not have disconnected it properly and did not report a problem with it to him; therefore the Landlord is seeking to recover the replacement cost of \$28.53 from the Tenant. The Landlord provided a receipt dated May 9, 2019 for the purchase of a smoke alarm. The Landlord provided a photograph of the ceiling showing a missing smoke alarm.

The Tenant replied that she is not responsible for the replacement cost of the smoke detector since she did not misuse it. She testified that it was beeping all the time. The Tenant testified that the smoke detector was subject to normal wear and tear and it was past its warranty period.

#### Bug Screen

The Landlord is seeking to recover costs for the repair of a bug screen. The Landlord testified that there were many small holes in the screen, which may have been caused by the Tenants cat. The Landlord is seeking to recover the amount of \$10.00.

In reply, the Tenant testified that she is responsible for the damage to the bug screen.

#### Bi Fold Door Repair

The Landlord testified that the rail that keeps the door in place was deformed. The Landlord testified that he was able to fix it himself; however, he needed to remove the rail; repair it; and reinstall it. The Landlord is seeking the amount of \$35.00 for the one hour of labor that it took him to repair the rail.

In reply, the Tenant provided testimony that the bi-fold door had come off the rail during normal use. The Tenant submitted that she is not responsible for the Landlord's labor to fix the door.

#### Crawlspace Door

The Landlord is seeking \$29.17 for the labor to repair a crawlspace door. The Landlord testified that the crawlspace door has a self-closing mechanism. The Landlord testified that the door was not closing properly and needed a washer and bolt. The Landlord testified that he does not know why the bolt fell off. The Landlord testified that he has not provided any evidence that the door was neglected by the Tenant. The Landlord testified that the Tenant did not inform him that the door was not closing properly.

In reply, the Tenant testified that she did not treat the door with disregard. She testified that the washer simply fell off. She submitted that she does not believe the door was under warranty.

#### Furnace Room Door

The Landlord is seeking the amount of \$5.83 for the 10 minutes it took to adjust the lock on the furnace room door. The Landlord testified that the tongue was hitting the door frame.

In reply, the Tenant testified that she never noticed a problem with the door and the Landlord noticed the problem at the time of the move out. The Tenant testified that she did not use the door in an improper way and she is not responsible for the cost of repair.

#### Closet Shelf Anchor

The Landlord is seeking \$5.83 for the labor to repair a broken shelf anchor. The Landlord testified that an anchor that secures the shelf to the wall was broken. The

Landlord testified that he replaced the anchor with a new one and moved the shelf to a different location. The Landlord provided a photograph of the broken wall anchor.

In reply, the Tenant testified that she does not know why the shelf wall anchor came out of the wall. The Tenant submitted that she is not in agreement to pay \$5.83.

#### Labor Cost for Smoke Detector Installation

The Landlord is seeking \$40.83 for the 70 minutes it took him to purchase, troubleshoot the problem with the smoke detector, and to install a new smoke detector.

In reply, the Tenant testified that she is not responsible for the Landlords labor and travel time to purchase a new smoke detector.

#### Move-in Inspection

The Landlord testified that since the rental unit was in new condition, he did not conduct a formal walkthrough inspection of the rental unit at the start of the tenancy. The Landlord did not complete a condition inspection report in accordance with the Residential Tenancy Regulations.

#### Security Deposit

On May 23, 2019, the Landlord applied to keep the security deposit of \$750.00 in partial satisfaction of his claims.

The Landlord testified that he received the Tenants' forwarding address in writing on May 8, 2019. The Landlord provided a copy of a letter from the Tenant containing the Tenant's forwarding address.

The Tenant testified that she did provide the Landlord with her forwarding address on May 2, 2019; however she does not have a copy of the letter. The Tenant testified that she accepts that the Landlord received her address on May 8, 2019.

#### Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline # 16 states the following with respect to types of damages that may be awarded to parties:

*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.*

Sections 23 and 35 of the Act provides 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. Each section also requires that the Landlord complete the condition inspection report; 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 24 (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 having does not offer the Tenant opportunities for an inspection and complete an inspection report in accordance with the regulations.

Residential Tenancy Policy Guideline # 1 Landlord and Tenant - Responsibility for Residential Premises provides the following information:

*Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.*

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

I find that the Landlord failed to conduct a move in inspection and complete a report that meets the requirements of section 20 of the Residential Tenancy Regulation. Pursuant to section 24(2) of the Act, I find that the Landlord's right to claim against the security deposit for damage to residential property is extinguished.

While the Landlord's right to claim against the security deposit is extinguished, the Landlord retains the right to make claims for compensation.

### Security Deposit

The Landlord extinguished his right to claim against the security deposit. I award the Tenant the return of the security deposit in the amount of \$750.00.

Pursuant to section 72 of the Act, any successful claim amounts awarded to the Landlord may be deducted from the deposit.

### Landlord's Claims

I have considered the Landlord's claims for the cost and repair of the following items:

- Smoke Detector
- Bi-fold Door
- Crawlspace Door
- Furnace Room Door
- Smoke Detector Installation

I find that there is insufficient evidence from the Landlord that the Tenant is responsible for the cost of replacement or repairs due to deliberate damage or neglect. I find that the need for replacement or repairs is due to reasonable wear and tear. The Landlord's claims for compensation for these items are dismissed without leave to reapply.

### Bug Screen

The Tenant accepted responsibility for the damage to the screen. I award the Landlord the amount of \$10.00.

### Closet Shelf Anchor

I accept the evidence that the wall shelf needed repair and I find that it is more likely than not that the shelf pulled away from the wall due to the weight load placed on the shelf. I find that the Tenant is responsible for the cost to repair the shelf. I award the Landlord the amount of \$10.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was partially successful with his monetary claims, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

### Awards

The Tenant has established a monetary claim in the amount of \$750.00 for the return of the security deposit.

I find that the Landlord has established a monetary award in the amount of \$115.83 for the cost of repairs and recovery of the filing fee.

I authorize the Landlord to retain the amount of \$115.83 from the deposit of \$750.00. I order the Landlord to repay to the Tenant, the amount of \$634.17 from the security deposit that the Landlord is holding.

I find that the Tenant is entitled to a monetary order for the balance of \$634.17. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

### Conclusion

The Landlord was partially successful with his claims for damage and repair costs.

The Tenant was successful with her claim for the return of the security deposit.

I authorize the Landlord to retain the amount of \$113.83 from the deposits of \$750.00 that he is holding.

I grant the Tenant a monetary order in the amount of \$634.17.

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: September 11, 2019

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Residential Tenancy Branch