



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSD, MND, FF

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for damages and for the filing fee. The landlord also applied to retain the security deposit in satisfaction of his claim.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issues to be decided**

Is the landlord entitled to a monetary order for damages and the filing fee? Is the landlord entitled to retain the security deposit?

### **Background and Evidence**

The background facts are generally undisputed. The tenancy started on July 07, 2018 and ended on July 31, 2019. The monthly rent was \$1,975.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$987.00. The parties agreed that the landlord returned \$522.65 to the tenant and is currently holding the balance of \$464.35.

A move out condition inspection was conducted on July 31, 2019. The landlord agreed that a report was not created during the inspection. The move out inspection report that

was filed into evidence by the landlord was not signed by the tenant. The tenant stated that she was not provided with a copy of the report until she received the hearing package.

The landlord testified that the rental unit was painted just prior to the start of tenancy and agreed that some of the paint peeled off as a result of inadequate workmanship. The tenant stated that the layers of paint did not go well together and there were several areas on the walls that were peeling.

On August 01, 2019 the landlord sent in a painter to fix the problem as it was still under warranty. The painter completed the job and provided an invoice to the landlord. The landlord filed a copy of the invoice which is in the amount of \$469.35. The invoice indicates that \$100.00 went towards work that was done under the warranty. The landlord is claiming the balance of \$364.35.

The tenant took responsibility for the damage done to the wall by installing a baby gate and offered to pay \$50.00 towards the bill. The tenant attributed the remainder of the alleged damage to wear and tear and improper workmanship.

The landlord filed photographs into evidence and other than the marks on the wall from the baby gate and three nail holes, the remainder of the damage as described by the landlord appeared in the photographs to be minimal.

The landlord is claiming \$364.35 to repair the damage to the walls plus \$100.00 for the recovery of the filing fee.

### **Analysis**

The move out inspection is an opportunity for the tenant and landlord to identify damage and come to an agreement on any deductions that can be made to the security deposit. The inspection should be conducted diligently using a flashlight if necessary as it is the only opportunity to identify damage that the tenant is responsible for. An inspection report must be created during the inspection and signed by both parties.

The burden of proof is on the landlord to prove that the tenant is also responsible for additional damage that is identified after the end of tenancy.

*Residential Tenancy Act* section 24 addresses:

**Consequences for tenant and landlord if report requirements not met**

24 (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.

In this case, the landlord did not create a report during the inspection and therefore the tenant was not given an opportunity to sign it. Based on section 24(2)(c) of the *Residential Tenancy Act*, the landlord's right to claim against the security deposit is extinguished and the landlord must return the deposit in its entirety to the tenant.

However, even though the landlord cannot make a claim against the deposit, Legislation allows him to make a monetary claim against the tenant to repair damage caused by the tenant. Based on the photographs filed into evidence, I find that the walls had one large scuff mark, 3 nail holes and some dings due to the installation of a baby gate. I must now determine whether the damage that the landlord is claiming is deliberate or a result of reasonable wear and tear or improper workmanship.

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. The tenant agreed to take responsibility for the damage caused by the installation of the baby gate and offered the landlord \$50.00. The landlord rejected the offer.

Based on the testimony of both parties and the photographs filed into evidence, I find that on a balance of probabilities it is more likely that not that the damage that the landlord is making a claim for is a result of a combination of reasonable wear and tear and improper workmanship. Accordingly the landlord's claim is dismissed. Since the landlord has not proven his claim, I find that he is not entitled to the recovery of the filing fee of \$100.00. However, the tenant agreed to pay \$50.00 towards the damage caused by the baby gate and therefore I allow the landlord to retain \$50.00 from the balance he is holding in the amount of \$464.35. Accordingly the landlord must return \$414.35 to the tenant.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

**RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH  
ARBITRATION**

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of his claim. Because the landlord has established a claim of \$50.00, it is appropriate that I order the return of the balance of the tenant's security deposit. I so order and I grant the tenant a monetary order in the amount of \$414.35. This order may be registered in the Small Claims Court and enforced as an order of that court.

**Conclusion**

I grant the tenant a monetary order in the amount of **\$414.35**.

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: December 03, 2019

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Residential Tenancy Branch