



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, MNDL-S, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$1,200.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of his filing fee.

The Tenant, S.R., and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their documentary evidence or other submissions to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on September 1, 2018, with a monthly rent of \$1,550.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$775.00, and no pet damage deposit. They agreed that the Landlord did not conduct a condition inspection of the rental unit at the start of the tenancy. The Landlord said, and the Tenant agreed that the Landlord told the Tenants to go through the rental unit and make a list of any damage or other problems with the rental unit. The Landlord acknowledged that he did not prepare or provide the Tenants with a condition inspection report ("CIR").

The Tenants submitted photographs of the rental unit before they moved in. The photographs reveal holes in the walls, dirt, and writing on a wall(s). The rental unit had a gold or caramel coloured paint throughout, although during the hearing the Landlord said that he paints all of his rental units grey. The Landlord testified that the Tenants painted the rental unit pink and that they spilled paint on the electrical plates throughout the rental unit. He said he had to replace all of the electrical plates from his inventory of plates. The Landlord said that you can get a box of these plates for about \$10.00. The Landlord did not say how many plates he had to replace.

The Landlord said the Tenants left paint cans behind. In his written submission, he said "There are charges involved to deliver to recycle depot. Will give the figure when done." The Tenant said that she left a note explaining that they left the paint cans behind, in case the Landlord needed to do any touch-ups.

The Landlord said that a pest control company placed seven mouse traps throughout the rental unit prior to the tenancy, but that there were none left at the end of the tenancy. The Landlord submitted a receipt for the replacement of these traps after the tenancy ended; however, he did not submit a receipt demonstrating that the company had placed them there prior to the tenancy. The Landlord said that the Tenants have a cat, so they did not care about mice.

The Landlord said that there were doors missing, but he said he had not replaced them. He did not direct me to any photographs of from where the doors had gone missing The

Landlord also referred to dents in a metal door that he said was not dented at the beginning of the tenancy; however, he did not provide any photographs or documentation of the door prior to the start of the tenancy.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Prior to the Parties giving evidence in the hearing, I advised them of how I would be evaluating the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. I said in this case, the **Landlord** must prove:

1. That the **Tenant** violated the Act, regulations, or tenancy agreement;
2. That the violation caused the **Landlord** to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the **Landlord** did what was reasonable to minimize the damage or loss.

#### “Test”

Further, pursuant to sections 23, and 35 of the Act, a landlord must complete a CIR at both the start and the end of a tenancy, in order to establish that the damage occurred as a result of the tenancy. If the landlord fails to complete a move-in or move-out inspection and CIR, they extinguish their right to claim against either the security or pet damage deposit for damage to the rental unit, in accordance with sections 24 and 36 of the Act. Further, a landlord is required by section 24(2)(c) to complete a CIR and give the tenant a copy in accordance with the regulations.

Sections 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and a that tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

The Landlord's evidence is that as of the hearing date, he had not repaired any of the damage he attributed to the tenancy, aside from having replaced an unspecified number

of electrical plates and installing seven mouse traps. The Landlord did not provide any photographs of the rental unit, which demonstrate that the electrical plates were damaged by the Tenants, in conflict with step one of the Test. Further, the Landlord did not submit any documentary evidence as to their original cost to the Landlord, which is inconsistent with step three of the Test noted above. The Landlord submitted evidence of installing the mouse traps after the end of the tenancy.

In addition, I find that the Landlord has not provided sufficient evidence that the mouse traps were in place prior to the tenancy commencing. Further, as the Landlord said, the Tenants have a cat and, therefore, they were not concerned about mice. I find on a balance of probabilities that it is unlikely that the Tenants would have taken or disposed of mouse traps, if they were in the rental unit at the start of the tenancy.

I find the Tenants' evidence of the condition of the rental unit before and after the tenancy to be more persuasive than the Landlord's testimony regarding the damages for which the Landlord seeks. Without sufficient evidence, including a CIR to establish the move-in condition compared to the move-out condition of the rental unit, I find that the Landlord has not proven his claims on a balance of probabilities. As a result, I dismiss the Landlord's Application wholly without leave to reapply.

### Conclusion

The Landlord is unsuccessful in his Application for compensation for damage or loss he alleges resulted from this tenancy. I find on a balance of probabilities that the Landlord did not provide sufficient evidence to support his claims. Accordingly, the Landlord's claims are dismissed wholly without leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: February 10, 2020

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Residential Tenancy Branch