



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on August 13, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit and for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

The Landlord attended the hearing. The Tenant did not attend the hearing. The Landlord stated that he sent the Tenant a copy of the Notice of Hearing and evidence by email on April 8, 2020. The Landlord stated that this is an email address he routinely uses to communicate with the Tenant. The Landlord stated that the Tenant never directly acknowledged the email with this Notice of Hearing, but responded about another topic from the same address sometime in May. I note that at the time this application was made, email was an acceptable method of service in situations where it is an address routinely used as a means of communication, and where the Tenant has communicated with the Landlord at that same email address since the Notice of Hearing was sent. I find the Tenant was sufficiently served with the Notice of Hearing and evidence, on April 11, 2020, 3 days after the email was sent.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

### Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit and for damage or loss under the Act?
- Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord stated that monthly rent was set at \$1,475.00 and was due on the first of the month. The Landlord holds a security deposit in the amount of \$737.50. The Landlord provided a copy of the tenancy agreement as well as the condition inspection report, which has both the move-in and move-out portions. The Tenant was present for both inspections and signed and acknowledged that the report fairly detailed the condition of the unit.

The Landlord provided photos taken at the end of the tenancy to show that there were an excessive number of holes on a couple walls in the living room. The Landlord stated that the Tenant did his own patch job, but the work had to be redone and the wall had to be repainted as a result of the excessive number of holes and poor patch jobs. The Landlord paid \$393.75, as per the receipt, to have 3 walls repainted on April 3, 2020. The Landlord stated that the rest of the paint was in good shape and only the walls with patch jobs needed repainting.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

In this case, the based on the undisputed evidence and testimony, I find it more likely than not that the Tenant caused an excessive number of holes in the living room walls, which is the reason this part of the rental unit needed repainting at a cost of \$393.75. I find the number of holes is excessive, and is beyond what would be considered a reasonable amount. Given all of this, I find the Tenant is liable for the repairs paid for by the Landlord to restore the drywall, holes, and to repaint the affected areas. I award this item in full.

Further, 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 successful in this hearing, I also order the Tenant to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution.

In total, I award the Landlord \$493.75 for this claim. I authorize the Landlord to retain this amount from the security deposit, which leaves a balance of \$243.75. I order the Landlord to return the remaining security deposit to the Tenant. A monetary order will be issued to the Tenant for this amount, \$243.75.

### Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of \$243.75. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: August 13, 2020

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Residential Tenancy Branch