



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT  
                              MNDL-S, FFL

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlords. The tenant had applied by way of the Direct Request process for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of the application, which was referred to this participatory hearing, joined to be heard with the landlords' application. The landlords have applied for a monetary order for damage to the rental unit or property; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant.

The tenant and the individually named landlord attended the hearing and each gave affirmed testimony. The landlord also represented the landlord company. The parties were given the opportunity to question each other and to give submissions. The parties confirmed that all evidence provided for this hearing has been exchanged, and all evidence has been reviewed and is considered in this Decision.

### Issues to be Decided

- Have the landlords established a monetary claim as against the tenant for damage to the rental unit, and more specifically for painting?
- Should the landlords be permitted to keep a portion of the security deposit in satisfaction of the landlords' claim?
- Has the tenant established that the portion of the security deposit withheld by the landlord should be returned to the tenant?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on July 1, 2019 and expired on June 30, 2020 at which time the tenant vacated the rental unit, with proper written notice to the landlord. Rent in the amount of \$1,500.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$750.00 and no pet damage deposit was collected. The rental unit is a bachelor apartment in an apartment complex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that a move-in condition inspection report was completed at the beginning of the tenancy, and a move-out condition inspection report was completed at the end of the tenancy on June 30, 2020. Both reports are on the same page for comparisons, and the tenant provided a forwarding address in writing on the form that day. It is signed at move-out by a landlord and the tenant and a witness.

Once a tenant gives notice to vacate a rental unit, the landlords give the tenants a kit containing move-out cleaning checklist and a short survey to complete. The tenant obviously received the kit because she returned the survey. Copies of the kit and completed survey have been provided as evidence for this hearing. One of the documents in the kit is a “reminder” of what is required by the tenant at move-out, which includes a list of charges for cleaning and painting, if required. It shows \$40.00 per hour for cleaning and \$40.00 per hour for painting, plus 20% for cleaning supplies and 35% for painting supplies. A bachelor/studio apartment would cost \$240.00 for cleaning and \$270.00 for painting.

This rental unit was painted just prior to the commencement of the tenancy. A Security Deposit Refund form has also been provided for this hearing by the landlords indicating a charge of \$40.00 for cleaning, \$8.00 for cleaning materials (20%); \$150.00 for painting; \$52.50 for materials (35%); and \$40.00 for repairs.

After the move-out condition inspection report was completed on June 30, 2020, the maintenance supervisor re-inspected and decided the damage to the walls in the rental unit was beyond normal wear and tear. The landlord emailed the tenant stating that painting was required. On July 7, 2020 the tenant replied to the landlord’s email stating, “I said no problem on the phone but was not aware it would be \$200.00.”

The landlords have also provided an Invoice totalling \$178.50 dated September 2, 2020 but the landlord testified that’s only the date of the Invoice; the painting was completed in July, 2020. The cost was less than stated in the Security Deposit Refund form because it’s a smaller suite.

The landlords returned \$459.50 of the security deposit to the tenant and seeks to keep the balance of \$290.50. The tenant agreed to the \$40.00 charge for repairs and the cleaning charges. The landlord is not certain when the cheque was sent to the tenant but believes it was within 15 days of move-out.

The rental unit was re-rented for the middle of July, 2020.

**The tenant** testified that on July 6, 2020 she received a phone call from the landlord while the tenant was at work, which seemed genuine, about a minor change and that there were too many marks on the walls. Then the tenant became aware of an email from the landlord during that phone call. The tenant has provided a string of emails that followed.

The tenant agreed to \$40.00 for cleaning and \$8.00 for cleaning supplies, and agreed to a \$40.00 charge for repairs, but the tenant does not agree to any painting charges. The parties had agreed that the landlords would return \$662.00 of the security deposit, but the landlord “whited out” the amount and wrote in a new amount on the Security Deposit Refund form. Both the original and the amended copy of the Security Deposit Refund form have been provided for this hearing. The tenant does not think any painting fees to the landlords are warranted; there was nothing wrong with the walls beyond normal wear and tear. No part of that charge is the tenant’s responsibility.

### Analysis

A landlord is required to return a security deposit to a tenant in full or make an application to keep any portion of it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant’s forwarding address in writing, unless the tenant agrees in writing that the landlord may keep it, or a portion of it. If the landlord fails to do either without the written consent of the tenant, the landlord must repay double the amount of the deposit. In this case, the landlords received the tenant’s forwarding address in writing and the tenancy ended on June 30, 2020. It is not clear when the tenant received a portion of the security deposit, however the cheque for the portion returned is dated July 7, 2020, and the landlord’s Application for Dispute Resolution was made on August 12, 2020, which is well beyond 15 days.

The *Residential Tenancy Act* places the onus on a landlord to ensure that move-in and move-out condition inspection reports are completed, and the regulations go into detail of how that is to happen. There is a reason that both the landlord and the tenant are to

attend the inspections when the report is made. The *Act* also states that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. A landlord may not change anything in the report or in the Security Deposit Refund form without the tenant's consent after it is signed by the tenant.

In this case, the tenant did not consent and disputes the landlords' claim for painting. I have reviewed the move-in and move-out condition inspection reports. On that form, the tenant agreed to \$88.00 being deducted from the security deposit. The Security Deposit Refund form was signed by the tenant indicating that the tenant agreed to deductions, and agreed that the portion of the security deposit to be returned to the tenant was \$662.00. However, the landlords changed that form after the tenant signed it, in the absence of the tenant, and returned \$459.50. A landlord may not re-inspect after a tenant has signed the inspection forms and then make a claim.

The landlords claim damages from the tenant, and in order to be successful, the onus is on the landlords to establish that the damage exists, and that the damage exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement, and the amount of the damage. I am not satisfied that the landlords have established that the painting required was due to anything beyond normal wear and tear. I am not satisfied that the landlords have complied with the *Act* or the regulations, and I dismiss the landlords' claim in its entirety.

The security deposit was \$750.00 and the tenant had agreed to deductions of \$40.00 for repairs, \$40.00 for cleaning, and \$8.00 for cleaning supplies, which totals \$662.00 to be returned to the tenant. Double the amount that the tenant did not agree to is \$1,324.00, less the amount returned to the tenant of \$459.50 is \$864.50, which I award as against the landlords.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, the landlords' application is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$964.50.

This order is final and binding and may be enforced.

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 29, 2020

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Residential Tenancy Branch