



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage to the rental unit and for compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 21 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that he was the regional manager for the landlord company named in this application and that he had permission to speak on its behalf at this hearing.

At the outset of the hearing, I informed the landlord that he was not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. During the hearing, the landlord affirmed under oath that he was not and would not record the hearing.

During the hearing, I explained the hearing process to the landlord. The landlord had an opportunity to ask questions. The landlord stated that he was ready to proceed with the hearing, and he did not make any adjournment or accommodation requests.

The landlord stated that the tenant was served with a copy of the landlord's application for dispute resolution and notice of hearing on January 15, 2021, by way of registered mail to the tenant's forwarding address. The landlord provided a copy of the move-out condition inspection report with the tenant's forwarding address, which he said was obtained on December 31, 2020. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application and notice of hearing on January 20, 2021, five days after its registered mailing to the tenant's forwarding address.

The landlord stated that the tenant was served with a copy of the landlord's evidence package on February 25, 2021, by way of registered mail to the tenant's forwarding address. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's evidence package on March 2, 2021, five days after its registered mailing to the tenant's forwarding address.

#### Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit and for compensation under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for this application?

#### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on October 15, 2019 and ended on December 31, 2020. A written tenancy agreement was signed by both parties. Monthly rent in the amount of \$1,250.00 was payable on the first day of each month. A security deposit of \$625.00 was paid by the tenant and the landlord continues to retain this deposit. Move-in and move-out condition inspection reports were completed for this tenancy. The tenant provided a written forwarding address to

the landlord on December 31, 2020, by way of the move-out condition inspection report. The landlord had written permission to keep \$130.00 from the tenant's security deposit for damage to the kitchen counter, by way of the move-out condition inspection report. The tenant verbally agreed to deductions totalling \$415.00 from his security deposit but did not indicate this in writing, when it was altered by the landlord in the move-out condition inspection report. The landlord's application to retain the tenant's security deposit was filed on January 13, 2021.

The landlord seeks a monetary order of \$415.00 plus the \$100.00 application filing fee. The landlord seeks to retain the tenant's security deposit of \$625.00 towards the above monetary order.

The landlord seeks \$236.25 to replace and install the kitchen countertop, \$140.39 to supply the kitchen countertop, \$25.00 for a late rent fee as noted in clause 7 of the tenancy agreement and the rent ledger, and \$100.00 for the application filing fee. During the hearing, the landlord reduced its claim of \$30.00 to \$13.36 for bedroom wall scratches, since the landlord did not file an amendment to its application to increase its claim from the original amount. The landlord stated that invoices and photographs were provided for the repairs. The landlord indicated that the bedroom wall scratches were due to abuse from the tenants and referenced photographs that were taken of same. He claimed that it was included in the \$180.00 amount referenced as "touch up paint walls" in one of the invoices.

### Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord 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 tenant in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of the landlord.

As noted on the landlord's monetary order worksheet, I dismiss the landlord's application of \$236.25 for countertop installation, \$140.39 to supply the countertop, \$25.00 for a December 2021 late rent fee, and \$13.36 for bedroom wall scratches, without leave to reapply.

The landlord's \$25.00 claim is indicated as "Dec 2021 late fee" in the landlord's monetary order worksheet. December 2021 is a date in the future, which has not yet occurred. Therefore, the tenant is not responsible for paying a future late rent fee to the landlord.

The two invoices supplied by the landlord for the installation and supply of the countertop and the wall scratches, indicate balances due. The landlord did not provide any receipts to confirm if or when any amounts were actually paid by the landlord for repairs. Both invoices do not indicate the full address of the rental unit, to indicate whether repairs were completed there.

The landlord's invoice of \$140.39 for the supply of the kitchen countertop has a date of January 31, 2021, more than one month after the tenant vacated the rental unit on December 31, 2020. The landlord did not indicate why there was a delay for this item.

The landlord's invoice of \$777.00, which includes the installation and replacement of the kitchen countertop and the bedroom wall scratches, indicates a date of January 19, 2020, almost one year before the tenancy ended on December 31, 2020. This date is prior to the kitchen countertop supply invoice of January 31, 2021. There is also a handwritten amount of \$11.25 for "labor" on the receipt, but the landlord did not indicate who made this notation. Aside from the replacement of the kitchen countertop, there are additional costs for reinstalling the sink and the faucet, that the landlord did not indicate in its monetary order worksheet or in its original application. This invoice indicates a handwritten notation of "\$30 price of bedroom wall included" in the \$180.00 amount described as "touch up paint walls" but the landlord did not indicate who made this notation.

The photographs supplied by the landlord show minor damage to the kitchen countertop, which appears to be reasonable wear and tear, for which the tenant is not responsible. During the hearing, the landlord did not indicate the age of the kitchen countertop, in order for me to determine its useful life under Residential Tenancy Policy Guideline 40. The landlord did not provide photographs of the kitchen countertop at the start of this tenancy, to show its condition or whether there was any pre-existing damage.

The photographs supplied by the landlord show marks on the bedroom wall. During the hearing, the landlord did not indicate the age of the paint on the bedroom wall, in order for me to determine its useful life under Residential Tenancy Policy Guideline 40. The landlord indicated in the move-in condition inspection report completed on October 15, 2019 “mark on wall” for the bedroom walls section. In the move-out condition inspection report on December 31, 2020, the landlord indicated “large scratches on wall” for the bedroom walls section. However, the landlord did not provide photographs of the bedroom wall at the start of this tenancy, to show its condition or the pre-existing mark on the wall, in order for me to determine whether the tenants caused additional marks or damages during their tenancy.

As the landlord was unsuccessful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenant.

### Security Deposit

The landlord continues to hold the tenant’s security deposit of \$625.00. Over the period of this tenancy, no interest is payable on the deposit. I find that the tenant provided a written forwarding address to the landlord on December 31, 2020, by way of the move-out condition inspection report. I find that the landlord applied to retain the security deposit within 15 days of December 31, 2020, as this application was filed on January 13, 2021.

I find that the landlord did not have written permission to keep \$130.00 or \$415.00 from the tenant’s security deposit. Verbal permission for \$415.00 is not permitted, as it is not in writing as required. Written permission for the \$130.00 in the move-out condition inspection report was unilaterally altered by the landlord to indicate “415” on January 13, 2021, the date this application was filed, as noted by the landlord on the report and during this hearing. Therefore, I find that the tenant did not agree to any deductions from his security deposit in writing, as the landlord altered the report without the signature or permission of the tenant.

In accordance with section 38 of the *Act*, I find that the tenant is entitled to the return of his full security deposit of \$625.00 from the landlord. The tenant is provided with a monetary order for same. Although the tenant did not apply for his security deposit return, I am required to consider it on the landlord’s application to retain it, as per Residential Tenancy Policy Guideline 17.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$625.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: May 17, 2021

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Residential Tenancy Branch