



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing.

On January 14, 2021 the Landlord applied requesting a monetary order for damage to the rental unit; to keep all or part of a pet damage deposit or security deposit; and to recover the cost of the application fee.

On February 11, 2021 the Tenant applied for the return of a security deposit and/or pet damage deposit and to recover the cost of the filing fee.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the evidence before me. The parties were informed that recording the hearing is not permitted.

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 compensation due to damage to the rental unit?
- Is the Tenant entitled to the return of the security deposit?

### Background and Evidence

The Landlord and Tenant testified that the tenancy began on January 1, 2020 as a one-year fixed term tenancy. Rent in the amount of \$2,800.00 was due to be paid by the first day of each month. The Tenant paid a security deposit of \$1,400.00 to the Landlord.

The Tenant moved out of the rental unit on December 31, 2020.

#### Landlord's Application

The Landlord testified that he made an appointment with the Tenant for a move out inspection for December 31, 2020.

The Landlord is seeking \$1,400.00 for damage to the rental unit. The Landlord testified that there was damage to the hallway wall possibly caused by the Tenant when she moved out. The Landlord testified that the kitchen countertop was scratched and needs to be polished. The Landlord testified that there is water damage present in the corner wall area of the master bedroom. The Landlord provided photographs of damage to the rental unit. The Landlord provided a copy of a move in inspection report dated January 1, 2020.

The Landlord testified that the owner has postponed completing repairs because of the covid pandemic, and the repairs will be completed in the summer of 2021. With respect to the cost of repairs, the Landlord provided a receipt like document dated June 17, 2021 from a person indicating the following:

- Polish countertop \$800.00
- Paint wall \$400.00
- Replace baseboard \$500.00

The rental unit has been re-rented to a new tenant.

In reply, the Tenant testified that she spent two days cleaning the rental unit and worked very hard cleaning the kitchen. She testified that at the move out inspection, the Landlord asked for \$200.00 for cleaning costs and she refused and did not sign the move out inspection form. The Tenant testified that the Landlord then refused to provide her with a copy of the inspection report. The Tenant testified that the Landlord made changes /additions to the condition inspection report after the inspection was complete. The Tenant testified that the Landlord added an additional \$200.00 charge for the kitchen.

The Tenant testified that after the tenancy ended, she re-entered the rental unit with the permission of the new tenant and she took photographs of the countertop showing that it is in perfect condition.

The Tenant testified that the water damage in the corner of the bedroom was already present when she moved into the unit. She testified that water seeps in through a gap in the wall/ door. She testified that she took a picture of this on October 21, 2020.

### Tenant's Application

### Emergency Repairs

The Tenant is seeking to recover \$126.00 for the cost of making a repair to the rental unit. The Tenant testified that she had a dryer vent fixed on her own initiative.

The Tenant stated that she could not call the Landlord to come fix the dryer because they were on bad terms due to the Landlord having 39 people come through the unit to view the suite.

The Tenant stated that she asked the Landlord to call consider the cost of the dryer even in exchange for the scratch on the hallway wall, but the Landlord refused this offer.

In reply, the Landlord testified that the Tenant made repair to the dryer without notifying him first. He testified that the first time he heard about this repair was when he received notice of the dispute. With respect to the showings, the Landlord stated that he gave proper notice of entry for the showings.

### Security Deposit

The Landlord testified that he received the Tenant's forwarding address on January 12, 2021. The Landlord applied to keep the security deposit on January 14, 2021. The Landlord is currently holding the \$1,400.00 deposit.

The Tenant testified that she did provide her forwarding address to the Landlord on the condition inspection report. She testified that she provided it again using email sent to the Landlord on January 19, 2021.

The Tenant is seeking the return of the security deposit in the amount of \$1,400.00.

### Analysis

Sections 23 and 35 of the Act provides that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Each section also requires that the Landlord complete the condition inspection report; both the Landlord and Tenant must sign the condition inspection report; and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

Section 36 (2) of the Act provides unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

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

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

### Security Deposit

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off provides:

*The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.*

The Guideline also provides that the right of a Landlord to obtain the Tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- *the landlord does not offer the tenant at least two opportunities for inspection as required; and/or*
- *having made an inspection does not complete the condition inspection report, in the form required by the Regulation, **or provide the tenant with a copy of it.***  
.....[my emphasis]

The Landlord did not respond to the Tenant's affirmed testimony that he failed to provide her with a copy of the move out inspection report. There was no documentary evidence provided from the Landlord on this issue. Based on the testimony before me, I find that the Landlord failed to provide a copy of the move out condition report to the Tenant within 15 days of the end of the tenancy. I find that the Landlord breached section 36 of the Act and does not have a right to file against the security deposit. I award the Tenant \$1,400.00 for the security deposit

While the Landlord lost the right to claim against the security deposit for damage, the Landlord still had a right to claim for damages arising out of the tenancy, including damage to the rental unit.

#### Landlord's Claims

I have reviewed the January 1, 2020 move in inspection report provided by the Landlord. I find that the report indicates there were slight marks and nail holes on the hallways walls. The report indicates there are marks on kitchen countertop. The report also indicates there were slight marks on the north wall of the master bedroom. I find that the rental unit had some damage present at the start of the tenancy.

I have reviewed the Landlords photographic along with the Tenant's photographic and video evidence. I find that the Tenant left the rental unit very clean. In particular the kitchen was left very clean.

With respect to damage, I find there is a deep scratch on the hallway wall. I find that the Tenant is responsible for the deep scratch on the wall.

After reviewing the photographs of the countertop from the Landlord and Tenant, I find that there are no discernable scratches, and nothing that would amount to more than normal wear and tear.

With respect to a damaged baseboard, I have reviewed the evidence and I note that the bottom of the baseboard has a swollen appearance consistent with water damage. I find the Landlord's claim for \$500.00 to replace a few feet of an approximately 5-inch-wide length of baseboard is grossly inflated.

Overall, I find that Landlord's claims to be compensated for damage to be inflated and unreliable. I find that the Tenant is not responsible for damaged countertop and the claim for the baseboard is grossly inflated. The I find that the Tenant has left the rental unit reasonably clean and undamaged except for a large scratch on the hallway wall.

I award the Landlord the amount of \$100.00 for the cost to repair and paint the hallway wall. The remainder of the Landlord's claims for damage are dismissed without leave to reapply.

### Tenants Claim

#### Compensation for a Repair

I find that a repair to the dryer hose was not an emergency repair and nevertheless, the Tenant completed the repair without first contacting the Landlord to notify him and have an opportunity to make the repair himself. I find that the Landlord is not obligated to pay the \$126.00 to the Tenant.

The Tenants claim to recover \$126.00 is dismissed without leave to reapply.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Both parties had some success, so I decline to order either party to pay the other the cost of the filing fee.

### Set Off of Claims

The Landlord is awarded a total amount of \$100.00 for the repair of the hallway wall.

The Tenants is awarded the return of the \$1,400.00 security deposit.

After setting off the awards, I grant the Tenant a monetary order in the amount of \$1,300.00. I order the Landlord to return \$1,300.00 to the Tenant. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement is recoverable from the Landlord.

Conclusion

After setting off the amounts awarded to each party, I grant the Tenant a monetary order in the amount of \$1,300.00. For enforcement, this monetary order must be served on the Landlord and may be enforced in Provincial 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: June 2, 2021

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Residential Tenancy Branch