



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord application: MNR-S, MND-S, FF  
Tenant application: MNSD-DR

### **Introduction**

This hearing was convened as the result of the cross applications (applications) of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord applied for a monetary order for unpaid rent, compensation for alleged damage to the rental unit by the tenant, and recovery of the cost of the filing fee.

The tenant applied for a return of her security deposit.

The landlord and the tenant attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed the considerable amount of oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### **Preliminary and Procedural Matters-**

The parties referred to a past dispute resolution proceeding, which I have now reviewed for relevance to this proceeding. That dispute involved the landlord's application under the direct request process for an order of possession of the rental unit and a monetary order for unpaid rent. The landlord was successful with the ex-parte proceeding (*without representation from the tenant*) and was granted an order of possession and a monetary order for unpaid rent. The tenant filed an application for review consideration and was granted a hearing. However, the arbitrator for that hearing, in a Decision of August 29, 2022, granted the landlord a monetary award of \$2,500 for the unpaid rent for March 2022, and authorized the landlord to retain the tenant's security deposit of \$1,250 in partial satisfaction of the monetary award. The arbitrator granted the landlord a monetary order of \$1,350, which reflected the deduction taken from the tenant's security deposit and the filing fee of \$100. That file application number is located on the cover page of this Decision.

Part of the landlord's monetary claim is \$2,500 for the March rent. The tenant's claim is a return of the security deposit.

I find the landlord's claim of \$2,500 for the March rent has already been decided by another arbitrator. Therefore, I am barred from re-hearing or changing a matter already heard and decided upon as I am bound by the earlier Decision of August 29, 2022, under the legal principle of *res judicata*. I therefore **dismiss** the landlord's present claim for \$2,500 for the March rent, **without leave to reapply**. I will only consider the landlord's request for "Repairing damages".

Likewise, I am also unable to consider the tenant's request for a return of her security deposit, as the arbitrator in the August 29, 2022 Decision granted the landlord authority to keep the tenant's security deposit to partially satisfy the landlord's monetary award for the March rent. This issue has previously been decided upon and I cannot change that previous Decision. I therefore **dismiss** the tenant's application seeking a return of her security deposit, **without leave to reapply**.

#### Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and recovery of the cost of the filing fee?

### Background and Evidence

The evidence shows the tenancy started on October 1, 2020, and ended on March 31, 2022. The monthly rent was \$2,500 and the tenant paid a security deposit of \$1,250. The tenancy ended on or about March 31, 2022. Filed in evidence was the written tenancy agreement.

The landlord's remaining monetary claim is \$6,241.20 for repairing damages. The landlord filed an invoice from a handyman service, showing the following charges: garbage removal and disposal of furniture for \$425, deconstruction of a shed for \$850, replacement of a baseboard heater for \$220, replacement of 3 blind sets for \$530, repainting the home for \$2,200, cleaning for \$325, repair scratches to entry floor for \$350, replace cook top due to scratches for \$819 and closet door repair for \$225. The additional charge is \$297.20 for GST.

The landlord testified to the following: The tenant put up a shed in October 2020 and basically smashed the glass prior to moving out, which caused the need for a clean up. Although his brother owns the handyman company, his brother had the quickest response to the request for quotes and work. The tenant caused the baseboard heater to need replacing, along with damage to 3 sets of blinds, which needed replacing. There was extensive damage to the painting and walls, such as holes everywhere, and drawings. The handrail was ripped off. The entire rental unit was dirty and required cleaning, debris and food were left in the rental unit, in other words, from top to bottom, the entire rental unit needed to be cleaned and garbage removed. The cook top was replaced due to the scratches, and it was not treated with respect. At the beginning of the tenancy, the cooktop was in good shape and in fine working condition. The condition was noted on the move-in and move-out condition inspection report (Report), filed in evidence.

In response to my inquiry, the landlord did not know the age of the blinds or cooktop and did not know the age of the painting. However, he takes pride in giving tenants a rental unit in good shape.

As to the Report, the landlord submitted that the tenant, the tenant's mother and a third party, "J", were at the premises for the final inspection; however, J conducted the inspection and thereafter J and her mom asked the tenant to sign and the tenant refused.

Other evidence filed included the written tenancy agreement and numerous photographs said taken at the end of tenancy and during various stages of work by the handyman.

### Tenant's response

The tenant testified to the following: The tenant denied that she signed the move-in Report and never received a copy of it until receiving the landlord's evidence. The tenant would have signed the Report had she received it. The shed the tenant put up during the tenancy is still up and has not been deconstructed and the blinds have not been replaced. The tenant moved across the street and can still see the shed up. J asked if he could sign the move-out Report and the landlord refused. The tenant took very good care of the place, and her mom cleaned the cooktop.

The tenant provided a written summary, in part as follows:

**The Landlord filed for Dispute Resolution and is making claims of cost of repairs that are not done. And under the tenancy act if the Condition Inspection was not conducted the landlord has waived the rights to make any claims. The landlord appeared to be back peddling as he knew he could not keep the deposit or make claims without the inspection so he completely made one up.**

### **September 22<sup>nd</sup>, 2020 Moved in (No condition Inspection)**

- Landlord provided tenant with key early so tenant could do some work as agreed (Including cleaning and landscaping)
- Condition inspection was never done at the start of the tenancy. Therefore landlord did not provide the tenant with a copy within the 7days.
  - \* Copy of condition inspection received by tenant in hearing package for Monetary claim included the condition inspection that is dated April 20<sup>th</sup>, 2022 . After reviewing tenant's signature was photoshopped in this is \*FRAUD the signature looks exactly the same as the signature on the lease just shrinked and you can look there is a box around the signature that result for the lines to disappear.

**March 31<sup>st</sup>. 2022 Tenant has moved out**

- Tenant has moved out and asked her friend [ ] to be present to do the move out inspection on the tenant's behalf.
- Landlord refused to let tenant's friend sign the move out inspection and no copies were provided.

**April 20<sup>th</sup>, 2022**

- Landlord filed a Notice of Dispute Resolution for
  - Monetary claim for damages from his Contractor " Landlords own Company" \$6241.20
  - Unpaid rent (Compensation month) \$2500
  - Recover of filing fees \$100
- Attached was a fake Condition inspection, Landlord used the signature on the Lease and copied it onto the Condition Inspection
- Items that is billed on the invoice like removing the playhouse \$850. The playhouse structure is still there how the tenant has left it.
  - Landlord [ ] uses the bottom of the Playhouse as a Storage. He had asked the tenant to leave the remaining Structure (Not sure why the landlord as to leave it and bill \$850 to remove it yet it is still there. (See photos)
- Landlord attached photos after he had possession. He put drywall fillers all over his walls and claims its damages
- Above the heater there is bubbling that is cause by the heat and moisture. Landlord was notified about this and the damage and is not caused by the tenant

[Reproduced as written except for anonymizing personal information to protect privacy]

**Discussion of the Report**

Both parties filed a copy of the Report. However, the lines and markings were quite faint and many parts of the Report could not be read.

Because a question of an altered Report had been raised by the tenant during the hearing and in evidence, the landlord was asked if he could provide the original document. The landlord said he did not have a copy of the original Report to file in evidence and had only a scanned document, which was filed in evidence. The landlord did have an original blank Report he uses, a form by a landlord's group, which he could

provide. The landlord filed this blank form during the hearing in order to compare that document with the evidence.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

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 whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process.

Under sections 23 and 35 of the Act, a landlord and tenant must inspect the rental unit at the beginning and end of the tenancy and the landlord must complete a condition inspection report in accordance with the regulations. Under section 23(5) of the Act the landlord and tenant must sign the Report and the landlord must give the tenant a copy of that Report.

Section 24(2)(c) of the Act states that a landlord's right to claim against the tenant's security deposit is extinguished if the landlord does not complete the Report and give the tenant a copy of it in accordance with the regulations.

As to the landlord's claims against the tenant for damage to the rental unit and cleaning, I find a critical component in establishing a claim for damage or cleaning, and the resulting expenses, is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports.

As to the Report, the tenant alleged that there was no move-in inspection, that she did not sign the Report as claimed by the landlord, and that she was not given a Report until receiving the landlord's evidence.

For this reason, I address the issue of credibility of evidence.

I have reviewed the Report filed by the landlord, the blank, standard form Report and the written tenancy agreement and I note the following.

The fillable blank form provided by the landlord, under the Move-in Inspection portion of the final page, contains continuous lines for signatures and list of reasons why the parties do not agree with the report as to the move-in condition. This part of the form is reproduced as follows:

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**PART IV - MOVE-IN INSPECTION**

☐ I \_\_\_\_\_ agree that this report fairly represents the condition of the rental unit.  
☐ I \_\_\_\_\_ do not agree that this report fairly represents the condition of the  
rental unit for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_

Tenant's Signature \_\_\_\_\_ Date: \_\_\_\_\_  
Landlord's Signature \_\_\_\_\_ Date: \_\_\_\_\_

The Report provided by the landlord in evidence, using that same fillable blank form, shows a strong clear landlord's signature at the beginning of the landlord signature line, and a faint signature on the tenant signature line, beyond the half-way mark on the tenant signature line, not directly above or close to the landlord's signature. Of most importance, the signature line under the tenant's signature is broken and uneven and faint in comparison to the rest of the signature line and the portion of the line directly above the tenant's signature is missing.

I compared the tenant's signature on the written tenancy agreement with the tenant's signature on the Report and find that signature to be an exact replica of the one on the tenancy agreement. The area around the tenant signature on the Report shows to be a box-style.

On the written tenancy agreement, the landlord and tenant signatures both appear at the left end of the signature line, which I find would indicate that had the tenant signed the Report, her signature would appear near or at the beginning of the signature line. Additionally, the landlord clearly filled in the date the tenant allegedly signed the Report, as it matched the date by the landlord's signature line, in blue, along with other markings, in blue, by the landlord.

I find on balance of probabilities that the landlord has copied the tenant's signature from the written tenancy agreement and pasted it on the tenant signature line on the move-in portion of the Report, which would account for the uneven and missing line on the Report. I therefore find the tenant's declaration that there was no move-in inspection and that she did not sign the Report to be credible.

Further to that, I find the unilateral additions to the move-in condition inspection report makes the report an altered document. I therefore find the altered document invalidates the Report in its entirety, and as a result, I find it unreliable and not credible.

As I find this altered document created by the landlord to be unreliable, not credible and thereby false, I find this puts **all** the landlord's evidence in doubt and therefore, not reliable. This is based on the legal doctrine, *Falsus in uno, falsus in omnibus*, which translated to English means "false in one thing, false in everything."



As a result, I find the landlord failed in their obligation under of the Act of conducting an inspection of the rental unit and completing the inspection reports at the beginning of the tenancy.

I therefore could not assess the condition at the end of the tenancy compared with the beginning of the tenancy. Consequently, I could not determine whether any alleged damage by the tenant was above and beyond reasonable wear and tear, or if there was any damage or repairs needed at all caused by the tenant.

Apart from that, having reviewed the landlord's documentary evidence, I find the invoice also contains deficiencies. The handyman invoice containing the monetary claim was not dated, nor was there a breakdown of the specific work performed or when it was performed. There was no receipt or invoice for the 3 sets of blinds, cooktop, or baseboard heater. In addition, I find it is not reasonable to have those details missing.

Furthermore, I have reviewed the photograph the landlord submitted of the baseboard heater from the beginning of the tenancy, where the front plate was attached, as opposed to the after tenancy photo, with the front plate unattached. In the before tenancy photo, I find there appeared to be black marks inside the heater and I also noted chips in the paint in that picture. I also note the blinds were pulled all the way up in the living room and therefore the move-in condition would be impossible to determine.

For the above reasons, as I have found the landlord's evidence is not reliable and due to the inconsistencies, I have noted in the photograph and documentary evidence, I find the landlord submitted insufficient evidence to support his monetary claim.

I therefore dismiss the landlord's application, without leave to reapply, due to insufficient evidence.

### Conclusion

The tenant's application was dismissed, without leave to reapply, as the issue of her security deposit had been decided in a previous dispute resolution Decision.

The landlord's application is dismissed, without leave to reapply, due to insufficient evidence.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 09, 2023

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Residential Tenancy Branch