



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for compensation for cleaning and repairs to the rental unit, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in payment of those amounts.

The Landlord said he served the Tenant on October 13, 2010 with the Application and Notice of Hearing (the "hearing package") by registered mail to a forwarding address provided by the Tenant. Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

### Issue(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This month-to-month tenancy started on August 15, 2009 and ended on September 30, 2010 when the Tenant moved out. Rent was \$800.00 per month. The Tenant paid a security deposit of \$400.00 on August 12, 2009.

The Landlord said he purchased the rental property in March of 2010 and was therefore not certain if a move in condition inspection report was completed. The Landlord said he made arrangements to do a move out inspection with the Tenant on September 30, 2010, but the Tenant did not show up for it. The Landlord did not complete a move out condition inspection report.

The Landlord said the Tenant returned to the rental property a day or two after the tenancy ended and he damaged a lock to the rental unit by breaking off a key. The Landlord said a neighbour of the Tenant's witnessed this and the Landlord reported it to the RCMP. Consequently, the Landlord sought \$83.99 for the cost to replace the lock.

The Landlord said it is a term of the tenancy agreement that the Tenant must steam clean the carpets at the end of the tenancy however the Tenant did not do so and instead left them in a dirty condition. Consequently, the Landlord sought \$198.24 as the cost to have the carpets cleaned.

The Landlord also said that some of the walls in the rental unit had a substance spilled on them that could not be washed off and as a result, he had to re-paint them. As a result, the Landlord sought \$86.14 for the cost of paint and painting supplies and \$245.00 for his labour to make the repairs.

### Analysis

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days). A condition inspection report serves as conclusive evidence as to whether the Tenant is responsible for damages to the rental unit during the tenancy or if he or she has left a rental unit unclean at the end of the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

Section 37 of the Act says that at the end of a tenancy a Tenant must leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion." In the absence of any evidence from the Tenant to the contrary, I find that the damages to the walls and the lock were not the result of reasonable wear and tear and that as a result, the Tenant is responsible for those damages. I also find that the Tenant did not leave the carpets reasonably clean and as a result, I find that the Landlord is entitled to be compensated for the following amounts:

Lock replacement:	\$83.99
Wall re-painting:	\$331.14
Carpet cleaning:	<u>\$198.24</u>
Subtotal:	\$613.37

As the Landlord has been successful in this matter, he is also entitled pursuant to s. 72 of the Act to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord claimed, however, that he was abandoning his claim for compensation in excess of the Tenant's \$400.00 security deposit.

Sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or a move out condition inspection report in accordance with the Regulations, the Landlord's right to make a claim against the security deposit for damages to the rental

unit is extinguished. In other words, the Landlord may still bring an application for compensation for damages however he may not use the security deposit to pay for those damages. I find however, that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep the Tenant's security deposit of \$400.00 in full satisfaction of his monetary claim in this matter.

### Conclusion

The Landlord's application is granted. 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: February 09, 2011.

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Residential Tenancy Branch