



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, MND, FF

### **Introduction**

This hearing was convened in response to cross-applications for dispute resolution by both parties

The tenant filed on August 07, 2012 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for the return of security deposit (\$350.00) - Section 38

The landlord filed on September 12, 2012 pursuant to the Act for Orders as follows;

1. A monetary Order for damages (\$2435.00) – Section 67
2. An Order to retain the security deposit in partial satisfaction of the monetary claim - Section 38
3. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given a full opportunity to provide relevant prior submissions of evidence, present relevant *sworn testimony* and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Preliminary Matters**

It must be noted that both parties sought to amend their applications via late document evidence submissions, seeking additional compensation from their original *Applications*. Neither party amended their original *Applications*. The landlord testified they gave 8 pages of late evidence to the tenant's daughter at the tenant's address - claiming they were 20 years old. The tenant testified their daughter to be 17 years old. I found this evidence improperly served in accordance with Section 88 of the Act for any late evidence consideration - thus inadmissible. There were no amendments granted during the hearing. The respective portions of evidence were not considered for this Decision.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

The tenancy began on February 01, 2000. At the outset of the tenancy the landlord of the day collected a security deposit in the amount of \$350.00. The applicant landlord assumed the rental unit March 01, 2002 along with the security deposit, and currently retains it. It is undisputed by the parties that there was no start of tenancy inspection at the outset of the tenancy or when the applicant landlord assumed possession in 2002. Approximately 3 years ago an additional occupant joined the tenancy.

The tenant vacated June 30, 2012 in accordance with the landlord's Notice to End for Landlord's Use. It is undisputed by the parties that there was no mutual end of tenancy inspection conducted by them. The landlord claims they did not know how to contact the tenant and did not have benefit of a forwarding address. The tenant claims they provided a forwarding address via the second tenant. I do not have evidence in support of this claim. However, the tenant testified that the landlord told the tenant that, "all was fine", as they were extensively renovating and repairing the rental unit as per the landlord's Notice to End for Landlord's Use.

The tenant seeks return of their original security deposit.

The landlord claims the tenant caused damage to the rental unit during their 12 year tenancy. The landlord claims the tenant broke the countertop. The landlord provided 2 photographs depicting what appears as cracked Arborite (a countertop cladding) adjacent to the taps, as well as a repair invoice for \$1107.00. The landlord claims the tenant stood on the countertop to replace lighting. The tenant claims the countertop slowly suffered water damage from the proximity to the taps over many years, and that they alerted the landlord to the progression of damage but the landlord did not attend to it. They also claim the countertop was old and worn, as depicted from the design on the Arborite finish. The tenant claims that any damage was from normal use over 12 years and resulted from reasonable wear and tear.

The landlord claims the tenant left the ceilings and walls stained from smoking in the rental unit. The landlord provided photographs and a painting invoice in the amount of \$510.00 to support their claim. The tenant acknowledges they smoked in the unit, as did the other occupant of the rental unit. The tenant claims the tenancy agreement did not prohibit smoking in the unit, and claims that any smoking stains on the walls resulted from 12 years of smoking, during which time the ceilings and walls were not repainted by the landlord. The tenant attributes the stained ceilings as normal wear and tear in concert with the extensive repairing of the rental unit as per the landlord's Notice to End for Landlord's Use.

The landlord also claims the tenant's use of an air conditioner in a window frame resulted in water ingress into the walled area of the bedroom, causing moisture-related damage and staining. The landlord provided 2 photographs and repair invoice for \$800.00 in support of this claim. The tenant claims there was no air conditioner unit in the window for the last 3 years of the tenancy, and that any water ingress purporting to have left the walled area moist at the end of the tenancy was the result of a leaky window allowing water into the walled area. The tenant claims they alerted the landlord whom did not attend to the problem. The landlord claims the tenant would not allow them into the unit, and they did not provide the tenant with a notice to enter for repairs.

The landlord's claim is for the invoiced work for the above noted claims of damage. The landlord also claims for photo printing.

### **Analysis**

On the preponderance of the evidence submitted and the sworn testimony of the parties, I find as follows:

#### **Tenant's claim**

I find that the landlord knew when the tenant was vacating, and failed to arrange for a mutual end of tenancy inspection. Regardless of the landlord's claims that they did not have a way to contact the respondent, I find it was available to the landlord to conduct a start of tenancy inspection when they assumed the property, and to make their request for an end of tenancy inspection with the second *occupant* of the rental unit, or provide any notice for such inspection via documentation in accordance with the Act / Regulations. In such absence, the landlord's right to retain the security deposit became extinguished and they were obligated to return the deposit. As the tenant failed to prove they provided a forwarding address to the landlord, they are not entitled to any further compensation as per Section 38(6) of the Act. I find the tenant is entitled to solely their original security deposit plus interest of \$30.11 in the aggregate of **\$380.11**.

#### **Landlord's claim**

Under the *Act*, the party claiming damage bears the burden of proof. **Section 7** of the *Act* states as follows:

#### **Liability for not complying with this Act or a tenancy agreement**

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The applicant must satisfy each component of the following test established by Section 7 of the Act:

1. Proof the damage or the loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the damage or a loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party, the tenant. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the landlord must show that reasonable steps were taken to address the situation and to show how they mitigated the purported damages and minimized the loss.

On preponderance of the evidence and on balance of probabilities I find the landlord may well have discovered deficiencies in the rental unit upon the tenant vacating, but the landlord has not met the test for damages. I find that I largely prefer the evidence of the tenant that the deficiencies found by the landlord were largely the result of reasonable wear and tear of a lengthy tenancy. I find the landlord did not successfully prove that the damage claimed was the result, *solely, of the actions or neglect of the tenant* in violation of the Act or agreement. I also find the landlord failed to prove they took reasonable steps to mitigate or minimize the claimed damage by factoring such things as reasonable wear and tear, or depreciation. I find the landlord did not provide sufficient evidence to support their claims. Therefore, I must **dismiss** the landlord's claim for damages. In respect to the balance of their claim, I find the landlord is not entitled to claim the cost of photo printing as this is a litigation cost, for which costs each party is responsible for their own. As a result of all the above, I **dismiss** the landlord's claim in its entirety, without leave to reapply

### **Conclusion**

The landlord's claim **is dismissed**, without leave to reapply.

The tenant's claim is allowed in the sum of \$380.11, without leave to reapply.

**I Order** that the landlord return the security deposit of \$350.00 plus accrued interest of \$30.11. **I grant** the tenant an Order under Section 67 of the Act for the sum of

**\$380.11.** If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

*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: October 24, 2012

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Residential Tenancy Branch