



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Landmark Realty Mission Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: i) MND, MNSD, FF; ii) MNSD, OLC

### Introduction

This hearing concerns 2 applications:

- i) by the landlord for a monetary order as compensation for damage to the unit, site or property / retention of all or part of the security deposit and / or the pet damage deposit / and recovery of the filing fee; and
- ii) by the tenants for a monetary order as compensation for the double return of the security deposit and / or pet damage deposit / and an order instructing the landlord to comply with the Act, Regulation or tenancy agreement.

Both parties attended and gave affirmed testimony.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

The unit which is the subject of this dispute is a 2 storey house. While it appears that the tenants took possession of the unit on March 23, 2012, pursuant to a written tenancy agreement the initial fixed term of tenancy was from April 01, 2012 to March 31, 2013. The agreement was later amended twice: first, to show an end date to the fixed term on March 31, 2014 and, second, to show an end date to the fixed term on March 31, 2015. The tenancy agreement provides that at the end of the fixed term, "tenancy may continue on a month-to-month basis or another fixed length of time."

Monthly rent was \$1,900.00. A security deposit of \$950.00 and a pet damage deposit of \$250.00 were collected. A move-in condition inspection report was completed with the participation of both parties.

By letter dated May 31, 2015, the tenants gave notice to end tenancy effective June 30, 2015. A move-out condition inspection report was completed with the participation of both parties on

June 30, 2015, and by way of their respective signatures, both parties agreed that “the report fairly represents the condition of the suite at the end of tenancy.” The tenants provided their forwarding address on the report.

The landlord filed an application for dispute resolution on July 15, 2015, which was subsequently amended on July 22, 2015. The tenants filed an application for dispute resolution on July 21, 2015. During the hearing the parties undertook to resolve at least some aspects of the dispute.

### Analysis

Based on the documentary evidence and testimony, the various aspects of the respective claims and my related findings are set out below.

### **TENANTS**

\$2,400.00: *double return of security deposit and pet damage deposit*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date when the tenancy ends, and the date the landlord receives the tenant’s forwarding address in writing, the landlord must either repay the security deposit and / or pet damage deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and / or the pet damage deposit, and must may the tenant double the amount of the security deposit and / or pet damage deposit.

In the circumstances of this dispute, I find that the landlord filed an application for dispute resolution on July 15, 2015, which is the 15<sup>th</sup> day after tenancy ended, and after the landlord received the tenants’ forwarding address in writing on June 30, 2015. Even while the landlord’s application was subsequently amended, I find that the application meets the statutory requirement for being filing within 15 days. In the result, I find that the application for double return of both deposits must be dismissed.

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### **LANDLORD**

\$122.50: *cleaning*

During the hearing the parties agreed to resolve this aspect of the application in favour of the landlord for the amount of **\$85.00**.

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\$483.15: *labour and paint related to miscellaneous repairs*

Section 37 addresses **Leaving the rental unit at the end of a tenancy**, in part:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and...

The landlord testified that limited painting, including certain touch ups, was undertaken throughout the unit prior to the start of tenancy in April 2012. It is noted that after this, the tenancy spanned a period of 3 years and 3 months. Residential Tenancy Policy Guideline # 40 speaks to the "Useful Life of Building Elements," and provides that the useful life of interior paint is 4 years.

Having reviewed the evidence which includes the comparative results of the move-in and move-out condition inspection reports, and in view of the statutory and Guideline provisions above, I find that the landlord has established entitlement limited to **\$100.00**.

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\$55.00: (from invoice total of \$278.68)

- *change knobs back (labour only)*
- *labour and cost (\$10.00) to replace shelf clips*
- *replace hood fan light cover (\$10.00)*

The tenants claim that while they offered to change the knobs back, the landlord declined. The tenants also claim that the misplaced shelf clips were later found and returned to the mailbox, although the landlord was not informed. Finally, the tenants do not dispute the landlord's claim of \$10.00 for replacement of the hood fan light cover.

On balance, I find that the landlord has established entitlement limited to **\$50.00**.

\$210.00: *miscellaneous depreciation*

I note that the methods used in assessing the condition of the unit at the start of tenancy, and then later at the end are different. Specifically, at the start the condition is documented on a template "condition inspection report." However, at the end the condition is described in a hand written account / narrative comprising several pages. In a more perfect world the move-in and move-out documentation would be completed on the same template document. In this way a more direct comparison can be made between the condition at the start and the condition at the end. Going forward, the attention of the parties is drawn to section 20 of the Regulation which speaks to **Standard information that must be included in a condition inspection report**.

A tenancy lasting 3 years and 3 months will lead to some “reasonable wear and tear,” and it is not clear how old certain items identified in the landlord’s claim were when tenancy began. Accordingly, I find that the landlord has established a claim of **\$50.00**.

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**\$50.00:** *filing fee*

As the landlord has achieved a measure of success with the main aspects of the application, I find the landlord has also established a claim to recovery of the filing fee.

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**Total entitlement: \$335.00** (\$85.00 + \$100.00 + \$50.00 + \$50.00 + 50.00)

### Conclusion

The landlord is ordered that s/he may withhold **\$335.00** from the tenants’ security / pet damage deposits in the combined total amount of \$1,200.00 (\$950.00 + \$250.00).

The landlord is ordered to repay the balance of the security / pet damage deposits to the tenants in the amount of **\$865.00** (\$1,200.00 - \$335.00), and pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants to that effect.

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: January 20, 2016

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Residential Tenancy Branch

