



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Edan Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      MNSD, MNDC, MND, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on November 28, 2016 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of double the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on December 7, 2016 with an amendment on May 5, 2017 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

It was noted during the hearing that the tenancy agreement was signed by Tenant CW and another person that is not the person named as a second Tenant in the Tenant's application. The Parties agreed that the person who signed the tenancy agreement with Tenant CW left and the second named Tenant moved in. Tenant CW states that a second agreement was then signed naming only Tenant CW. The Landlord denies that another tenancy agreement was entered into but does not dispute that the tenancy continued with Tenant CW and that the security deposit was kept for the continuing tenancy with Tenant CW.

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 started on December 1, 2009 and ended on February 29, 2016. At the outset of the tenancy the Landlord collected a security deposit of \$497.50 and a pet deposit of \$497.50. The Parties mutually conducted a move-in inspection on November 28, 2009 with a completed inspection report copied to the Tenant.

The Landlord states that an initial offer to conduct a move-out inspection was offered for March 2, 2016. The Landlord cannot recall the time offered and states that it was between the hours of 8:00 a.m. and 8:00 p.m. The Landlord states that the Tenant did not show up between those hours. The Landlord states that a second offer was provided for the following day at 2:30 p.m. and that this was agreed to by the Tenant but that the Tenant became angry and refused to do a walk through on that date. The Landlord states that the Tenant was swearing, yelling and screaming while being physically threatening and demanding the return of the security deposit. The Landlord states that they called the police who arrived within 10 minutes and that the police told the Tenant to leave because of his aggression. The Landlord states that no charges were laid but that the police recommended vandalism charges as the unit was in disarray and was badly damaged. The Landlord states that they have never received a forwarding address from the Tenant. The Landlord denies that they received the Tenant's forwarding address from the police officer.

The Landlord states that there was no letter from a police officer in the contents of the Tenant's evidence package. The Tenant states that the letter was included in both packages that were given to the Landlord: one on the door and the second same package by registered mail. The Landlord acknowledges receipt of the registered mail and while going through the package in front of the Landlord at the hearing the Landlord notes that their copy of the Tenant's evidence package was no longer in order.

The Tenant denies that there was any offer made for March 2, 2016. The Tenant states that he did attend the inspection on March 3, 2016 and upon entering the unit the Tenant started to

audio record. The Tenant submits that due to the Landlord's abusive behavior they would always record their interactions each time the Landlord came around. The Tenant states that it was not able to provide a copy of that recording due to technical difficulties. The Tenant states that upon going upstairs Landlord EK called the Tenant a "f---g pig" and hit the Tenant in the face. The Tenant states that he did not hit back and called the police. The Tenant states that he wanted to pursue charges however the police told him all parties would then have to be arrested. The Tenant states that the Landlord was given the Tenant's forwarding address by the police officer who suggested to the Tenant that he should leave. The Tenant states that no other opportunity to conduct another inspection was offered by the Landlord.

The Tenant provides a witness letter from a neighbour and I note that this letter indicates that on the day of the move-out inspection the neighbour saw the Tenant come out of the unit with a red and swelling face. This letter also indicates that the neighbour witnessed the police officer informing the Tenant that the Landlord had agreed to return the full deposit immediately upon receipt of the forwarding address given to the Landlord by the police officer. The Tenant also provides a letter from the police officer indicating such provision of the forwarding address. The Tenant also provides a witness letter stating that the Tenant left a second forwarding address in writing by posting the letter on the Landlord's door on March 5, 2016. The Tenant claims return of double the combined security and pet deposit.

The Landlord denies that the Tenant was assaulted by Landlord EK and states that this would be impossible as Landlord EK is right handed and could not have struck the Tenant where he said he was hit. The Landlord states that Landlord EK could not attend the hearing to give evidence as it was too stressful for him.

The Landlord states that because the Tenant left the unit unclean and with damages the Landlord was not able to rent the unit until April 4, 2016. The Landlord states that they could not access the unit prior to the end of the tenancy but that they did not request access by providing written notice to enter the unit. The Landlord acknowledges that the tenancy was ended by mutual agreement that is set out in a previous Decision dated November 3, 2016. The Landlord states that they did not advertise the unit for rent until the beginning of April 2016 and that they sought \$1,050.00 for the rental amount. The Landlord claims lost rental income of \$1,016.89.

The Landlord states that the Tenants did no cleaning whatsoever to the unit at move-out. The Landlord states that they cleaned the unit themselves but cannot state how many hours they took. The Landlord states that their labour included washing all the walls due to smoke damage. The Landlord claims \$3,200.00 and states that this includes their labour to make repairs to the unit. No invoice was provided. The Landlord states that while they took several photos of the unit at move-out they only provided a few as samples for the hearing. The Tenant provides photos of the unit from the end of the tenancy.

The Landlord states that the bathtub drain was damaged and blocked. The Landlord states that in order to repair the drain they required an internal wrench. The Landlord claims the cost for that wrench of \$134.27. The Landlord states that eventually a plumber had to be called in for repairs. The Tenant states that there was no blockage and no damage left on the drain and that they never experienced any problems with the drain during the tenancy.

The Landlord states that the baseboards were left broken and torn. The Landlord states that they do not know how this damage occurred. No photos of the baseboards were provided as evidence. The Landlord claims \$50.89. The Tenant states that no damages were left on the baseboards and that they were installed new by the Tenant 10 months prior to the end of the tenancy.

The Landlord states that the walls required painting as they had smoke stains. The Landlord states that the walls were previously painted a year prior to the end of the tenancy and that the Tenant's painted the walls themselves. The Landlord states that the Landlord had paid for that paint but not the labour. The Landlord claims a total amount of \$993.34 for the cost of paint and supplies. The Tenant denies that the walls were stained. The Tenant states that the Landlord only paid a total of \$1,500.00 towards the costs of the paint and flooring previously done by the Tenant.

The Landlord states that the hinges were broken on two kitchen cabinet doors and that they were left in bad shape. The Landlord states that the cabinets are 15 years old. The Landlord does not identify the amount being claimed for the repair of the cabinets and no costs are specifically identified on the monetary worksheet that is in relation to the cabinets. The Tenant

states that there was only one cabinet hinge that was damaged and that the Landlord had fixed it once but not properly as it never closed after this repair. The Tenant states that the outer part of the cabinets were fine beyond normal wear and tear.

The Landlord states that the laminate flooring in each room was damage with worn areas, cigarette burns and slices. The Landlord states that the kitchen vinyl also had cigarette burns and slices. The Landlord states that the vinyl is 15 years old. The Landlord states that all the floors also had pet urine odor and were stained. The Landlord also states that there were no visible stains on any of the flooring. The Landlord states that as a result all the flooring had to be replaced. The Landlord states that the laminate flooring was only 9 months old, that the Tenants put in this flooring and that they were paid \$1,600.00 for the supplies and nothing for their labour. The Landlord claims \$3,779.59 for flooring supplies and materials.

The Tenant states that no damages were left by the Tenants but that the Landlord's friend damaged the floor in the living room. The Tenant states that this was done while the friend was moving an appliance in the unit. The Tenant provides a video recording of the friend moving the appliance. The Tenant states that the receipt provided by the Landlord for the costs of the flooring has a different address than the rental unit. The Tenant states that the Landlord also owns other rental units. The Landlord does not know why the receipt indicates a different address.

The Landlord states that the window coverings in each of the rooms were damaged and that one set was removed. The Landlord provided one photo of the living room covering. The Landlord states that the coverings were 15 years old. The Landlord claims \$266.97 for the cost of replacement blinds.

The Landlord states that a closet door in the second bedroom was left broken by the Tenants. The Landlord claims the replacement cost of \$59.64. No photo was provided. The Tenant states that no doors were damages and points to the photos numbered 1 to 14 to show that there is no damage on any closet doors.

The Landlord states that the Tenants never returned the keys for the mailbox, garbage and front door and claims \$16.49 for their replacement. The Landlord states that the Tenants were never

asked to return the keys earlier than the move-out inspection. The Tenant states the Landlord had actually changed the locks on March 1, 2016 so the Tenants kept the keys until the move-out inspection.

The Landlord states that the Tenants left a light fixture in the second bedroom without a cover. The Landlord states that the Tenants also left a broken fixture in the stairwell. No photos were provided, no amount was identified for this claim and no amount can be discerned on the monetary worksheet that can be identified as related to these claims. The Tenant denies any damage or removal of any fixtures. The Tenant pointed to two of their photos of light fixtures. The Tenant states that they were unable to take photos of the entire unit and never expected any claims in relation to light fixtures.

The Landlord claims the costs of registered mail to serve the Tenant. The Landlord states that the claims stated at the hearing are the total of their claims for damages.

The Tenant claims \$200.00 for the assault by Landlord EK and \$200.00 for the ongoing verbal abuse and harassment by Landlord EK. The Tenant states that Landlord EK would show up without notice and would make calls and texts at 2:00 a.m. The Tenant provides a written submission in relation to the claim for harassment and verbal abuse as well as a witness letter. The Tenant states that the Landlord would come around drunk and on one occasion attempted to hit the Tenant.

The Landlord denies that Landlord EK would call as stated as they are seniors and would not be awake then. The Landlord denies that she ever texted the Tenants. The Landlord states that Landlord EK has a disability that affects his speech and balance. The Landlord named the disability. The Tenant states that the Landlord told them that he appeared drunk because he had shingles and not the disability stated by the Landlord.

### Analysis

Section 36 of the Act provides that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord has provided two opportunities for a move-out inspection and the tenant has not participated on either occasion. Given the lack of oral or supporting evidence in relation to the details of a first offer for a move-out inspection by

the Landlord and considering the Tenant's evidence of no first offer I find on a balance of probabilities that the Landlord only made one offer for an inspection on March 2, 2018. Given the undisputed evidence that the Tenant attended the unit on the agreed time and date I find that the Tenant did participate until the Parties entered into a confrontation. Given the Tenant's witness letter from the neighbor I find on a balance of probabilities that the Tenant was assaulted by the Landlord. I therefore find that the continuing lack of participation by the Tenant was not due to any act of the Tenant and that the Tenant's right to return of the security deposit was not extinguished.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the evidence of the incident that occurred during the move-out inspection I find it difficult to accept that the Landlord would not recall the provision of the Tenant's forwarding address from the police officer. Further, in the face of the evidence from the police officer, the Landlord's evidence is not that of lack of recall but of complete denial. This leads me to consider that the Landlord's evidence overall lacks credibility. Given this lack of credibility and the evidence of the Tenant's evidence package in disarray I find on a balance of probabilities that the Tenant did provide the Landlord's with a copy of the police officer's letter in relation to the forwarding address. Accepting the Tenant's credibly supported evidence I find that the Landlords received the Tenant's forwarding address on March 3, 2017. As the Landlord neither returned the security deposit or made an application to claim against the security deposit within 15 days of receipt of the forwarding address I find that the Landlord must now pay the Tenant double the combined pet and security deposit plus zero interest in the amount of **\$1,990.00**.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the

claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the Tenant's witness letter from the neighbour I find on a balance of probabilities that the Landlord did assault the Tenant at the time of the move-out inspection and as a consequence the Tenant was not present to complete the inspection and did not provide input for the report completed by the Landlord. As the Tenant was not present for the move-out inspection and given the Landlord's lack of credibility, I find that the move-out inspection report carries little to no weight.

Given each Party's photos I find that the Tenants did leave the unit mostly clean with some cleaning misses. However as the Landlord provided no invoice setting out the time spent on any cleaning and as the Landlord could offer no evidence of how long they spent cleaning I find that the Landlord has not substantiated the cleaning costs claimed and I dismiss this claim.

Given the Landlord's overall lack of credibility, the undisputed evidence of the age of the cabinets and previous repairs to the cabinet hinge, the lack of photos of damaged closet door and missing light fixture and considering the Tenant's evidence of no damages I find that the Landlord has failed to provide sufficient evidence to substantiate on a balance of probabilities that the Tenant left damages to the cabinet, closet or light fixtures.

Given the age of the blinds I find that the Landlord has not substantiated that the Tenants damaged the blinds beyond reasonable wear and tear or that the blinds had any useful life left to them.

Given the lack of any supporting evidence such as a plumber's bill indicating that the Tenant's left the unit with plumbing problems and considering the Tenant's overall preferred evidence of no problems with plumbing during the tenancy, I find that the Landlord has not provided sufficient evidence to substantiate on a balance of probabilities that the Tenant caused any damage to the plumbing or drainage in the bathroom. I therefore dismiss the claims in relation to these items.



Given the undisputed evidence that the walls of the unit were painted nine months prior to the end of the tenancy, the video of damage to the walls by the Landlord's friend and considering that the Landlord provided no photos of any stains on any walls, I find that the Landlord has not substantiated that the Tenants left the walls of the unit damaged. I therefore dismiss the claims for painting the unit.

Given the evidence of the new flooring installed by the Tenants and considering that the Landlord's receipt for the costs claimed for replacement flooring note a different address, I find that the Landlord has not substantiated that the Tenants either damaged the flooring and baseboards or that the Landlord incurred costs to replace the flooring in the Tenant's unit. I therefore dismiss the claim in relation to the replacement of the flooring and baseboards in the unit.

Given the mutual agreement to end the tenancy I consider that the Landlord knew a few months in advance of the end of the tenancy. Despite this knowledge the Landlord did nothing to seek new renters for March 1, 2016 by advertising the unit and giving the Tenant notices to enter for showing the unit. The Landlord also sought a higher rent for the next tenancy. I also consider that the Landlord has not substantiated that the Tenant caused the damages claimed to the unit. For these reasons I find that the Landlord failed to substantiate that the Tenant caused any lost rental income or that the Landlord took any reasonable steps to mitigate any lost rental income. I therefore dismiss this claim.

As there is nothing in the Act that provides for the recovery of costs related to the participation of a party in the proceedings other than the filing fee, I dismiss the Landlord's claim for registered mail costs. As none of the Landlord's claims have been successful I find that the Landlord is not entitled to recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to reasonable privacy and freedom from unreasonable disturbance. Section 6 of the Act provides that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. Although I accept that the Landlord assaulted the Tenant and that this was an unreasonable disturbance as this occurred after the

end of the tenancy I find that there is no basis under the Act to find the Tenant entitled to compensation for this incident. As a result I dismiss the claim for compensation for the assault.

Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”. There is insufficient evidence that the Landlord “engaged in a course” to describe the Landlord’s actions as harassment. However given the Tenant’s credible and supported evidence of Landlord EK’s behavior during the tenancy I find that the Landlord did significantly disturb the Tenants during the tenancy by his behavior. I find that the Tenants are therefore entitled to the reasonable amount claimed of **\$200.00**. As the Tenant’s claims have met with substantial success I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,290.00**.

As the evidence indicates that only Tenant CW signed a tenancy agreement, I grant the monetary award only to Tenant CW.

#### Conclusion

The Landlord’s application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$2,290.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that 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 7, 2017

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Residential Tenancy Branch