



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC MNSD FF / MNSD FF

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

#### Landlord:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

#### Tenant:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the respective applications and evidence submissions.

The tenants evidence submissions included a monetary order worksheet which included a couple additional items not included in the original application. As the tenants did not file an amendment to their original application to include a claim for these items and increase the monetary amount sought, these additional items were not addressed in this hearing and decision.

### Issues

- Is the landlord entitled to a monetary award for compensation for loss?
- Is the landlord entitled to retain the tenants' security deposit?
- Is the landlord entitled to recover the filing fee for this application from the tenants?
- Are the tenants entitled to return of all or a portion of the security deposit pursuant to section 38?
- Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The landlord purchased this home from the tenants and then rented it back to them. The tenancy began on September 1, 2016 and ended on September 30, 2019. The monthly rent was \$1500.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$750.00 was paid at the start of the tenancy which the landlord continues to retain.

A move-in inspection was not completed as the tenants were already occupying the home at the beginning of the tenancy. A move-out inspection was completed on September 29, 2019. Although the move-out inspection appears to reflect the tenants' agreement for the landlord to retain \$356.95 of the security deposit, the parties confirmed in the hearing that the "amount" section of the report was blank at the time of signing and filled out later. The tenants acknowledged signing the portion of the move-out report which indicated they agreed to the condition of the report at the end of the tenancy, including the following comments:

"damage to the drywall, every room needs painting, floors not clean, alarm system removed by tenant"

The landlord's application was filed within 15 days of a forwarding address being provided by the tenants.

The landlord's is claiming \$262.50 for painting. The landlord submitted an invoice and pictures of the rental unit reflecting various patches on the walls. The landlord testified this expense was for the living room wall inly which contained the most damage due to the tenants removing an alarm system from the wall.

The landlord is claiming \$94.45 for cleaning. The landlord relies on the move-out condition inspection as evidence of the unit not being cleaned at the end of the tenancy. The landlord submits the cleaning charge was based upon a minimum 2 hour charge.

The landlord is also seeking \$1300.00 for the estimated cost of replacing an alarm system removed by the tenants. The landlord submits that the alarm system was reflected in the contract of sale and thus was the property of the landlord. A copy of the contract of sale was submitted as evidence. The landlord submits that the alarm system was specifically included in the contract as it was a feature they seen and liked on viewing the home before purchase. The landlord submitted a list from the alarm company of all the items that were removed along with the value of each item. The landlord submits the tenant should have paid out their remaining contract with the alarm company and left the hardware behind.

The tenants testified that unit was cleaned at the end of the tenancy. The tenants dispute the painting charges and argue that it was normal wear and tear over the three-year tenancy. The tenants argued that the rental unit was not painted for over 6-7 years and that they patched all holes at the end of the tenancy.

The tenants argue that they were still under contract with the alarm company and the contract was in their son's name not theirs. The tenants argue they were just leasing the equipment from the alarm company and the landlord was given the option to take over the contract but declined. The tenants argue that some equipment was left behind including a secondary alarm system.

In reply, the landlord argues the system was sold with the house and it was their choice to not take on the service contract.

### Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

I find that the tenants did not leave the rental unit reasonably clean and undamaged beyond normal wear and tear and this is supported by the landlord's picture evidence and the move-out inspection report. I note that the tenants agreed to the condition of the rental unit as reflected in the move-out condition report, specifically that the walls were damaged, and the floors were not clean. It is not sufficient for a tenant to leave holes patched even if the rental unit had not been painted for a number of years. The

landlord still suffered a loss for having to re-paint the unit which may otherwise have not been as necessary or urgent. I find that the landlord has established the existence of the damage or loss as claimed and that it occurred due to the actions or neglect of the tenants. The landlord has also submitted evidence in support of the actual amounts required to compensate for the loss or repair the damage. I find the landlord has suffered a loss as claimed in the amount of **\$262.50** for painting and **\$94.45** for cleaning.

With respect to the alarm system, there was no dispute that the tenants removed the system at the end of the tenancy. I find the landlord has submitted evidence that the alarm system was included in the contract of sale and as such the tenants did not have a right to remove it. The tenants should have not included the alarm system in the contract or included an addendum explaining that only certain parts or alarms were included. No such breakdown was provided. As such, I find the reference to the alarm system in the contract of sale to encompass the entire alarm system(s). The alarm system was in the rental unit at the time of purchase and beginning of the tenancy and should have remained there at the end. The landlord was under no obligation to take on the remaining contract. I find the landlord suffered a loss of **\$1300.00** which is supported by the list of missing items and their value as submitted by the landlord.

As the landlord was successful in his application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for his application.

I allow the landlord to retain the \$750.00 security deposit in partial satisfaction of the monetary award. I note that although the landlord extinguished its right to claim against the security deposit for damages as per section 24 of the Act by failing to complete a move-in inspection report, the landlord still had a right under the Act to claim against the deposit for "other losses" such as loss of the security system as in this case.

**The landlord is therefore granted a monetary order in the amount of \$1,006.95 (\$262.50 + \$94.45 + \$1300.00 + \$100.00 - \$750.00).**

The tenant's application for return of their security deposit is dismissed without leave to reapply. As the tenants were not successful in this application, the tenants are not entitled to recover the filing fee paid for their application.

Conclusion

Pursuant to section 67 of the *Act*, **I grant the landlord a Monetary Order in the amount of \$1,006.95.** Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: February 04, 2020

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Residential Tenancy Branch