

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: MND, MNSD, MNDC, OLC, FF

## Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim and a cross-application by the tenant for a monetary order. Both parties participated in the conference call hearing and had opportunity to be heard.

At the outset of the hearing the landlord advised that he had submitted additional evidence, which included photographs and an amendment to his claim, both to the Residential Tenancy Branch by fax and to the tenant by registered mail just 3 days before the hearing. The tenant testified that she had not received the evidence. The Residential Tenancy Rules of Procedure require parties to submit evidence 5 days prior to the hearing. Under the Act, documents sent by registered mail are not deemed received until 5 days after the date they are mailed. Although the landlord's evidence was received by the Residential Tenancy Branch 3 days prior to the hearing, I find that the tenant has received and therefore not had opportunity to review and respond to the landlord's evidence and I decline to consider the landlord's late evidence. The claim is not amended and only the claim submitted in the landlord's original application has been considered.

## Issue(s) to be Decided

Is the landlord entitled to a monetary order as requested?

Is the tenant entitled to a monetary order as requested?

## Background, Evidence and Analysis

The parties agreed that the tenancy began on November 15, 2008. The written tenancy agreement shows that the tenancy was on a month-to-month basis with rent set at \$950.00 per month. At the outset of the tenancy the tenant paid a security deposit of

\$475.00. I address the respective claims and my findings around each below:

### Landlord's Claims

- [1] **Broken mirror.** The landlord claims \$38.00 as the cost of replacing a broken mirror and \$20.00 as the cost of installing same. The tenant acknowledged that she was responsible for the mirror but disputed the labour charge. The landlord testified that installing the replacement mirror was a quick process but that he claimed \$20.00 in labour as this is what he would have been charged had he hired someone to install the mirror for him. I find that the landlord is entitled to the \$38.00 cost of the mirror and a nominal amount for the labour involved with installing the mirror. I find that \$5.00 will adequately compensate the landlord for his labour and I award the landlord a total of \$43.00 for this claim.
- [2] **Carpet cleaning.** The landlord claims \$216.00 as the cost of professionally cleaning the carpets at the end of the tenancy. The tenant testified that she felt the landlord should be limited to \$100.00 for carpet cleaning as she estimated this would be the cost of a Rug Doctor machine for do-it-yourself steam cleaning. The tenant did not dispute that the carpets were soiled and required cleaning. In the absence of a dispute that the carpets required cleaning, I find that cleaning was required. The tenant had the opportunity to clean carpets but chose not to do so. I do not find the landlord's claim for the cost of professional cleaning to be unreasonable and I find the landlord is entitled to recover \$216.00 for the cost of cleaning the carpets. I award the landlord \$216.00.
- [3] **Repair of blinds.** The landlord claims the cost of replacing 13 of the vanes on the vertical blinds in the rental unit. Although the landlord spoke of 18 broken vanes at the hearing, his original application only claimed \$144.00, which was set out as the cost of replacing 13 vanes. The condition inspection report, which was signed by the tenant and indicated the tenant's agreement that the report fairly represented the condition of the unit, made note that 18 vanes were broken. The tenant testified that only 2 of the vanes were broken beyond reasonable wear and tear and further testified that she signed the condition inspection report because the inspection had taken a long time, her children were cold and the landlord was

pestering her to sign. The landlord testified that the blinds were approximately 5 years old. In light of the tenant's acknowledgment on the condition inspection report that 18 vanes were broken, I find that the tenant is responsible for the broken vanes. I do not accept that the tenant signed the condition inspection report under duress and find that she is bound by her agreement with the reports' representation of the condition of the unit. Residential Tenancy Policy Guideline #37 lists the useful life of blinds as 10 years. I find that the tenant deprived the landlord of half of the life of the 13 broken vanes and find that the landlord is entitled to recover half of the cost of replacing the blinds. The landlord's original claim set the price of replacing the vanes at \$144.00. I find the landlord is entitled to recover one half, or \$72.00 of the cost of the replacement and I award the landlord this sum.

- [4] **Painting bathroom.** The landlord claims \$50.00 as the cost of painting the bathroom in the rental unit. As the landlord's late evidence was not considered, there is no evidence to corroborate the landlord's claim that the paint was damaged and required repair. The condition inspection report does not mention any damage to the paint. I find that the landlord has not proven on the balance of probabilities that the bathroom required repainting and I dismiss the landlord's claim.
- [5] **Light bulbs.** The landlord claims \$3.87 as the cost of replacing burned out light bulbs in the rental unit. The tenant did not dispute the claim. I award the landlord \$3.87.
- [6] **Cleaning.** The landlord claims \$150.00 in compensation for the labour involved with cleaning the rental unit at the end of the tenancy. The landlord testified that he and three other people spent 8 hours cleaning the rental unit. The tenant argued that she had cleaned the unit thoroughly and suggested that the only cleaning that may have been required were window sills on the upper floor needing to be wiped down. The tenant provided photographs of the rental unit at the end of the tenancy. The condition inspection report lists 20 areas as being dirty. Having reviewed the photographs and the report, I am persuaded that the unit was substantially clean with only a few areas that may have required wiping down. I am not convinced that 8 hours of labour was required for cleaning. I find that \$50.00

will adequately compensate the landlord for the cleaning required and I award the landlord that sum.

[7] **Loss of income.** The landlord claims \$475.00 in loss of income, claiming that the tenant was not available to do a condition inspection prior to February 4, which prevented him from re-renting the unit at the beginning of February. The Residential Tenancy Act and Regulation require the landlord to give the tenant at least two opportunities to schedule a condition inspection at the end of the tenancy. The second opportunity must be in writing on the approved form. I find that the landlord did not meet his obligation under the Act to provide the second, written notice to schedule a condition inspection and find that the landlord must bear the loss associated with scheduling an inspection into the month following the end of the tenancy. The landlord's claim is therefore dismissed.

[8] **Filing fee.** The landlord seeks to recover the \$50.00 paid to bring this application. I find that the landlord is entitled to recover the fee and award the landlord \$50.00.

### Tenant's Claim

The tenant claims a refund of half of the rent paid during the term of the tenancy. The tenant testified that at the time she signed the tenancy agreement, the landlord made no mention of restricting her use of part of the home but when she arrived at the home to move in, he advised her that she could not use the basement as he was storing his belongings there. The tenant testified that when the landlord so advised her, she did not protest or request a rent reduction. The tenant claimed that she paid to heat the entire house, including the area the landlord was using as storage. The landlord testified that he had made it clear that the tenant was only permitted to use the basement area to access the washer and dryer and that otherwise it would be used for his storage. The landlord pointed to the Condition Inspection Report on which he had written "Not supposed to be in rental except for laundry," which notation was initialled by the tenant. The tenant claimed that this notation was written at the end of the tenancy rather than at the beginning of the tenancy as claimed by the landlord but did not offer an explanation as to why she would initial such a notation at the end of the tenancy.

Although the tenancy agreement does not specify that the basement was not to be part of the rental unit, I find that the exclusion of the basement was agreed upon at the start of the tenancy. I have arrived at this decision because I find it unlikely that the tenant, upon moving into the rental unit and discovering that an entire floor was unavailable for her use, would not in some way protest or demand to renegotiate the rent and would not even raise this as an issue until some 3 months after the tenancy had ended. The tenant's claim for compensation is dismissed.

### Conclusion

In summary, the tenant's claim is dismissed and the landlord has been successful in the following claims:

Broken mirror	\$ 43.00
Carpet cleaning	\$ 216.00
Repair of blinds	\$ 72.00
Light bulbs	\$ 3.87
Cleaning	\$ 50.00
Filing fee	\$ 50.00
<b>Total:</b>	<b>\$434.87</b>

I order that the landlord retain \$434.87 from the deposit and interest of \$476.46 in full satisfaction of the claim and I order the landlord to return the balance of \$41.59 to the tenant forthwith. I grant the tenant an order under section 67 for \$41.59. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated May 08, 2009.