



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

<u>MNSD</u>	The Return or Retention of the Security Deposit
<u>MNDC</u>	Money Owed or Compensation for Damage or Loss
<u>FF</u>	Recover the Filing Fee for this Application from the Respondent

### Introduction

The hearing was convened to deal with an application by the tenant for the return of double the \$612.50 security and pet damage deposits under the Act. The tenant was also seeking reimbursement for the \$50.00 fee paid for this application.

This Dispute Resolution hearing was also convened to deal with a cross application by the landlord for a monetary claim of \$2,951.63 for the cost of cleaning, damages, and loss of rent. The landlord was also seeking reimbursement for the \$50.00 fee paid for this application.

Both the landlord and tenant were present and each gave testimony in turn.

### Issues to be Decided for the Tenant's Application

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of double the security deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
  - Did the tenant pay a security deposit?

- Did the tenant furnish a forwarding address in writing to the landlord?
- Did the landlord make an application to retain the deposit within 15 days of the end of the tenancy and receiving the written address?

### **Issues to be Decided for the Landlord's Application**

As the landlord was seeking to receive a monetary order for cleaning, damage and other costs, the issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for loss and damages. This determination is dependant upon answers to the following questions:
  - Has the landlord submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act* by establishing on a balance of probabilities that:
    - the costs were incurred due to the actions of the tenant.
    - the costs occurred due to a violation of the *Act* or Agreement
    - proof of the amount or value being claimed.
    - A reasonable effort has been made to minimize the damages

The tenant had the burden of proof to establish that the deposit existed, that the written forwarding address was provided and that 15 days had expired without the landlord either refunding the deposit or making application to keep it. The landlord had the burden of proof to show that compensation for damages and loss was warranted.

### **Background and Evidence**

The tenant testified that the landlord had not returned the tenant's security deposit within fifteen days after being given a forwarding address for the tenant in writing and, in

fact, has not returned the deposit to date. The tenant is seeking double the security deposit pursuant to the provisions in section 38 of the Act.

The tenant gave testimony that she provided her forwarding address at the time that the tenancy ended. The tenant testified that on June 3, 2009 she sent the landlord a written request by registered mail asking for her deposit and had included her forwarding address. However, the landlord failed to return the deposit within 15 days. The tenant testified that the address for the landlord was one that she had obtained from another resident. The tenant stated that this was necessary because she could not find her copy of the tenancy agreement with the landlord's mailing address on it. Evidence indicated that the address where the tenant sent the written request was (Address-X). However, the landlord's address shown on the application and on the tenant's tenancy agreement was (Address-Y).

The landlord testified that no forwarding address was ever received from the tenant. The landlord testified that the address where the tenant sent the letter containing her forwarding address was not correct and did not resemble the address provided on the tenancy agreement or the Inspection Report form.

The landlord testified that the tenancy originally began on in March 2007 and a move-in inspection report was done. This report was submitted into evidence. The landlord testified that on April 1, 2009, the tenant initially handed the landlord a written notice to vacate on May 1, 2009, but then took back the notice to correct the date for vacating as April 30, 2009. The landlord testified that the tenant never did resubmit the written notice. The landlord testified that together, the tenant and the landlord did a move-out inspection on April 30, 2009 before the tenant left. However, the tenant took exception to the landlord's assessment of damages and left without signing the report. The landlord stated that two additional notices of opportunity to do the inspection were posted on the door in May 2009 after the tenant left as the landlord did not have the forwarding address. The tenant did not respond.

The landlord testified that the tenant caused irreparable damage to the carpeting which was only 3 years old. The landlord testified that the carpet was left with a bad odour of urine, and was frayed and stained. The landlord included a photo showing that the carpeting had pulled away from the metal transition strips where the carpet ended and the linoleum started and stated that this was likely caused by the tenant dragging heavy objects over these spots. The landlord was claiming \$346.50 for new laminate flooring, \$21.50 for metal edging and \$64.50 for wall mouldings, with additional costs for labour. The landlord testified that the tenant had left an indentation on 2 closet doors at a replacement cost of \$78.50 plus labour, and had punctured another interior door costing \$44.50 plus labour. The landlord was claiming for a set of blinds damaged by the tenant at a cost of \$27.25. The landlord testified that 2 baseboard heaters were broken, valued at \$87.96, a smoke alarm was dismantled costing \$21.98 and that the door lock needed to be replaced at a cost of \$34.98, as it was not installed properly by the tenant. The evidence included photographs of these items and an amalgamated invoice from a contractor enumerating each cost. According to the landlord, the unit was freshly painted for the tenant when the tenancy began but walls were left dirty, damaged and poorly plastered at the end of the tenancy. The landlord testified that the tenant's ineffective efforts to repair the holes in the walls actually caused more work. The landlord was claiming compensation for painting costs including 5 gallons of interior latex costing \$149.85, 2 gallons of oil-based paint costing \$63.98 and 3 gallons of ceiling paint for \$74.97, plus labour costs for patching, cleaning and painting. The landlord testified that additional cleaning costs of \$240.00 were incurred because the tenant failed to leave the unit reasonably clean. Also being claimed was loss of rent for the month of May in the amount of \$825.00 which the landlord alleged was caused by having to have the unit vacant to prepare it for rental. The landlord submitted written statements from a previous caretaker, and others in regards to the before and after condition of the unit along with photos of the unit.

The tenant disputed all of the claims except for the damaged closet door and some minor cleaning issues. In regards to the carpet, the tenant testified that no abuse

occurred and that it began to fray in the spots where the carpeting joined the floor through normal wear and tear such as vacuuming. The tenant stated that at the end of the tenancy, the carpet was steam-cleaned but acknowledged that some odour persisted. The tenant does not feel that she should be responsible to replace the carpeting or trim. In regards to the dents on the closet doors the tenant testified that one door was damaged by her nephew. The tenant testified that the punctures in the interior door, the state of the baseboard heaters, the dismantled smoke alarm and many of the walls were left in the same condition as they were in when she moved in. In regards to the door lock, the tenant testified that during the tenancy, when the landlord failed to respond to requests to replace the non-functional lock, her nephew did the job to the best of his ability and the mechanism worked. The tenant testified that she did damage a set of blinds but replaced them at the end of the tenancy. The tenant also objected to being held responsible for the repainting of the unit, stating that some walls were already damaged and that the condition was due to normal wear and tear. In regards to cleaning, the tenant stated that she thoroughly cleaned the unit but acknowledged that she missed some of the lower cupboards and the ceiling fan which, according to the tenant, would have entailed no more work than one or two hours. The tenant disputed the landlord's claim for loss of rent in the amount of \$825.00.

### **Analysis: Tenant's Application**

The tenant has made application for the return of the security and pet damage deposits. Section 38 of the Act deals with the rights and obligations of landlords and tenants in regards to the return of security deposit and pet damage deposit. Section 38(1) states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address a landlord must either:

- repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

OR

- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord was in possession of the tenant's security deposit held in trust on behalf of the tenant at the time that the tenancy ended. I find that although the tenant clearly made an effort to provide the landlord with a forwarding address in writing, the tenant did not provide sufficient proof that service of the document was accomplished. I find that the tenant is not entitled to return of double the security deposit as the fifteen-day deadline would start only once the landlord received the forwarding address in writing. However, the original amount being held by the landlord and the interest are still a credit for the tenant.

### **Analysis: Landlord's Application**

In regards to the landlord's claim for monetary damages, an applicant's right to claim damages from the another party is covered under, Section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to mitigate the damage or losses that were incurred.

The landlord has presented photos clearly showing some dirt and damage. Provided that the unit was clean and in good repair when the tenancy started, it would be a violation of the Act under section 37 (2)(a) for a tenant to fail to ensure that the rental unit was reasonably clean, and undamaged, except for reasonable wear and tear, upon vacating and the tenant would be liable for any costs or losses that flowed from the tenant's failure to comply with the Act.

Move-In and Move-Out Inspection reports signed by both parties, are critical pieces of evidence required in proving that element 2 of the test for damages has been met by showing the "before-and-after" condition of the unit. In this instance, the move-in inspection report showed that the unit was in good condition, but was not completely pristine when the tenant took possession. The move-out report, which was completed by the landlord, and was unsigned by the tenant, showed numerous condition issues.

The damage to the carpeting, particularly where it was joined to the linoleum, was evident in the photos. The landlord speculated that the tenant had likely damaged the transition strips by dragging a heavy item over the floor bracket. I do not accept this testimony as proof that the tenant had abused the transition strip. The bracket does not appear to be crushed. In fact these brackets are made to with-stand abuse being that they consist of a raised edge. In any case, it is the carpeting itself which appears to have pulled away from the strip. I find that the fraying of the carpet edge at two different

locations seems to point to the possibility that the carpeting may not have been securely installed. I also find that the large transitional area between the kitchen and adjacent area would be significantly more prone to wear and tear. I find, from the photos submitted by the landlord, that no baseboards were visible along the edges of the carpet at the wall. I accept the tenant's testimony that the carpeting frayed progressively during the course of the tenancy due to vacuuming and normal wear and tear. I also accept the tenant's testimony in regards to pre-existing punctures in the interior door, previous damage to baseboard heaters, damaged smoke alarm and bumps or pin holes in some of the walls. In regards to the poorly-fitted door latch, I find that the landlord had knowingly permitted the tenant to fit the hardware and failed to check the quality of the job at any time during the tenancy.

In regards to the cleaning claims, I find that the tenant freely acknowledged leaving some of the cleaning undone. Accordingly, I find that the landlord is entitled to compensation for two-hours of cleaning at \$20.00 per hour for a total of \$40.00 for cleaning. In regards to the closet door damage, which the tenant acknowledged, I find that the landlord is entitled to compensation for one of the double-panel closet doors at the pro-rated value of \$30.00. In regards to the damaged blind, I find that the landlord is entitled to partial compensation in the amount of \$20.00. I find that the landlord is not entitled to compensation for painting supplies for the ceiling area but should be reimbursed for the purchase of the latex wall paint and oil paint. As the average life of interior paint is listed to be four years and the paint in the unit was 2 years old, I find that the landlord is entitled to a pro-rated amount of \$108.00 for paint supplies. I find that the evidence submitted in support of the labour costs lacks sufficient detail to meet element 3 of the test for damages. Finally I find that the landlord is not entitled to be compensated for one-month loss of rent as the landlord did not adequately prove that rectifying damage due to the tenancy took an entire month and also because of the fact that some of the work which was done did not relate to this tenant.



Based on the evidence and testimony I find that the landlord is entitled to be compensated in the total amount of \$248.00 comprised of \$40.00 for cleaning, \$30.00 for replacement bi-fold door, \$20.00 for the new blind, \$108.00 for paint supplies and the \$50.00 fee paid for this application.

Pursuant to my authority under section 72 of the Act, I order that the landlord may retain \$248.00 from the \$629.51 security deposit and interest being held on behalf of the tenant in full satisfaction of the claim. Accordingly I hereby issue a monetary order in favour of the tenant for the remainder of \$381.51. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to retain \$248.00 from the security deposit and must refund the remainder of \$381.51 to the tenant.

The remainder of both the tenant's and the landlord's applications are dismissed without leave.

September, 2009

Date of Decision

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Dispute Resolution Officer