



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes

MNSD & MNDC

### Introduction

This hearing dealt with an application by the tenant seeking compensation for the sum of \$294.00 as the tenant disputes the landlord deducting costs related to one week of rent and for cleaning and making repairs to the rental unit after the tenancy ended.

The issue of jurisdiction was raised during the hearing and I provided the parties a further opportunity to provide written submissions addressing this issue. The landlord was provided until September 22, 2009 and the tenant was provided to September 29, 2009 to submit a written response. I received one page of written evidence from the landlord on September 22, 2009 and no response from the tenant.

### Issues(s) to be Decided

Is there jurisdiction under the *Residential Tenancy Act* to consider this application?

Has the tenant established a monetary claim related to damage or loss under the *Act*?

### Background and Evidence

This tenancy agreement began on December 3, 2008 for the monthly rent of \$375.00 and a security deposit of \$500.00 which was paid on December 3, 2008. The tenancy was for a fixed term of twenty-four (24) months at which point the tenant is required to vacate the rental unit. The tenancy agreement states that the tenancy is a week to week basis for the maximum term of 24 months and that the tenancy can be ended by the tenant with one week's notice in writing. The landlord does not have the reciprocal right to end the tenancy in one week.

The tenancy agreement also expressively states at the top of the agreement that this housing is considered transitional and that tenancy agreement does not fall under the Residential Tenancy Branch.

In support of the position that this tenancy is not governed by the *Act* the landlord provided a letter from BC Housing, authored by the Regional Director – Interior Region, which states:

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*“...residents sign a program agreement which provides residents with a 24 month tenancy after which time they are expected to secure more long term housing. As a result, this is not permanent housing and should be considered transitional in nature.”*

The landlord's agent stated that the rental building operates as part of the Provincial Homelessness Initiative providing contained rental units but providing outreach staff 7 days a week. Potential tenant's must be homeless or at risk to becoming homeless to qualify for this housing.

The tenant did not present any arguments speaking to jurisdiction. The tenant disputes that the landlord made the following deductions from her security deposit:

|  |                 |
|--|-----------------|
| Cleaning of rental unit (2 hours @ \$20.00 per hour)             | \$40.00         |
| Replace damaged curtain  | \$80.00         |
| Charge of rent for March 1 – 10, 2009 (10 days \$ 12.10 per day) | \$121.00        |
| <b>Total</b>   | <b>\$261.00</b> |

The tenant paid a security deposit of \$500.00; therefore, the remaining sum owed was \$239.00. It's not clear from the tenant's evidence why she has requested compensation for the sum of \$294.00.

The tenant presented a witness who was involved in cleaning the rental unit and participated in the move out condition inspection report of the rental unit. The witness indicated that she was called back to complete further cleaning and the landlord's agent was satisfied that the rental unit was returned to an acceptable condition.

The tenant disputes all the charges claimed by the landlord as being unnecessary and contrary to the *Act*.

The landlord's agent at the hearing was unable to specifically comment on the condition of the rental unit at the time of the move out condition inspection. The landlord's agent stated that the tenant was evicted and rent was charged for the days it took to clean the rental unit and prepare it for a new occupant. The landlord indicated that additional cleaning is required to sanitize the rental units. The landlord also stated that the curtains are custom made and the original curtain was burned by the tenant.

## Analysis

I have considered the issue of jurisdiction and find that the contract between these parties is not excluded from the *Residential Tenancy Act*. Section 4 of the Act provides that the Act does not apply to certain living accommodation, including “living accommodation provided for emergency shelter or transitional housing.”

The Act does not define “transitional housing”. The ordinary meaning of the word “transition” includes:

“a passing from one condition, form, state, activity, place, etc.”  
[Webster’s New World Dictionary: Third College Edition]

The definition of “passing” includes:

“going by, beyond, past over, or through” and “lasting only a short time; short-lived; fleeting; momentary.”

[Webster’s New World Dictionary: Third College Edition]

I find that the exclusion of emergency shelters and transition houses from the application of the Act refers to accommodation that is of a temporary nature designed to house individuals or families moving from one place to another, often in emergency situations. I find this determination consistent with the definition of transition and passing, as provided above.

I do not accept that the agreement entered into between the parties represents emergency or transitional housing as intended by the legislation. A tenancy for a term of twenty four (24) months is clearly not transitional, regardless that it is characterized as a week to week tenancy. The only aspect of this tenancy agreement which can be considered as ‘weekly’ is clause number 8 (a) which allows the tenant to end the tenancy with seven (7) days written notice. The tenancy agreement requires a monthly rent and required a security deposit in exchange for exclusive possession of the rental unit. I find that the tenancy agreement between the parties is not a licence to occupy, for the purpose of being emergency or transitional housing, but gives exclusive possession of the rental to the tenant in exchange for a monthly rent and a security deposit for a significant period of time.

I find that the *Act* applies and governs the tenancy agreement between the parties. Despite the claim at the top of the contract that this agreement is exempt from the Act

and pursuant to section 5 of the *Act*, the legislation cannot be avoided by the either party.

Having accepted jurisdiction of this application under the *Act*, I now turn my mind to the tenant's claim for compensation.

The landlord has not provided any evidence to support the costs deducted from the tenant's security deposit. I accept the evidence of the tenant's witness, in the absence of the move out condition inspection report that she cleaned the rental unit to a degree that is reasonable and there were no grounds for the landlord to charge \$40.00 for two hours of cleaning. I note that the landlord stated that additional cleaning had to be done to sanitize the rental unit; however, this additional cleaning is beyond that expected or to a standard which is not reasonable for a tenant to complete. In addition, I have no evidence of the damage to the walls related to nail holes. However, I find that nail holes are consistent with normal wear and tear and are not normally the responsibility of the tenant to repair. In the absence of any evidence that the holes were beyond normal wear and tear I find that this charge was not reasonable. Finally, the landlord has charged the tenant \$80.00 due to damage to a curtain which is apparently custom made. The tenant did not dispute damaging the curtain but did argue that the replacement cost is unreasonable. Although I do not have any evidence of the cost to replace the curtain I do find that the charge of \$80.00 is unreasonable. This is for a new curtain and does not reflect that the curtain will have a depreciated value through normal wear and tear. I find that it was reasonable for the landlord to charge the sum of \$50.00 to replace the curtain.

I direct the landlord and tenant to section 1 of the *Residential Tenancy Branch Policy Guidelines Manual*, which sets out the respective responsibilities of each with respect to maintaining and cleaning a rental unit. For example, this guideline provides some of the following information:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).

#### Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the

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tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

3. The tenant is responsible for all deliberate or negligent damage to the walls.

Finally, I reject the landlord's position that they required a week to return the rental unit to a condition for which it could be re-rented and reject that they retained 10 days of rent from the tenant for the sum of \$121.00.

I grant the tenant's application and I Order that the tenant be returned the sum of \$201.00 comprised of the return of the \$121.00 for rent from March 1 to 10<sup>th</sup>, 2009 and \$80.00 of the \$140.00 charged by the landlord. I grant the tenant a monetary Order of the sum of **\$201.00**.

I note that in her application the tenant has requested the return of the sum of \$294.00; however, I have been unable to calculate this sum given the evidence presented at the hearing. I find that my calculations are correct and final given the evidence presented during the hearing and given the failure of the tenant to provide a clear break down of what she was claiming in this application.

## Conclusion

I have determined that this dispute and the tenancy agreement between the parties are governed by the *Residential Tenancy Act* and are not exempt pursuant to section 4. As a result I have determined that the landlord was only entitled to retain the sum of \$50.00 and must return the remaining balance of the security deposit to the tenant for the sum of **\$201.00**.

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: October 1, 2009.

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Dispute Resolution Officer