



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND, FF

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

### Landlords application

This is a request for a monetary order for \$6,360.77

### Tenants application

This is a request for a monetary order for \$1977.98

### Background and Evidence

#### Landlords claims

The landlord has submitted a statement in which she outlines a claim for a significant amount of alleged damages and cleaning resulting from this tenancy.

The landlord claims that, even though requested frequently not to do so, the tenant or the tenant's father destroyed property that belongs the landlords and that there are numerous items that were there at the beginning the tenancy and are now missing or broken, or that are damaged beyond repair.

The landlord also claims that the tenant failed to take proper care of the property and as a result there are numerous plants and shrubs that have either died or been removed by the tenants.

The landlord further claims that the rental unit was left in an extremely dirty condition that required an extensive amount of cleaning, which included the cleaning of the lower bedroom which had a strong stench caused by the tenants ferrets.

The landlord has supplied a breakdown and itemized list of repair costs totalling \$6,360.77, less a small amount for items of the landlord is subsequently found.

### Tenants claims

The tenant has stated that the landlords claim is grossly exaggerated and although he admits there was a need for some cleaning and repairs, his estimate for the cleaning and repairs totals \$402.70.

The tenant denies that his ferrets caused a smell in the lower bedroom and suggests that the smell is likely from a flood that occurred previously and had not been professionally cleaned.

The tenant further claims that the majority of the damage claimed by the landlord is for items that the tenants had no knowledge of, or had permission from the landlord to alter or use.

Residential Tenancy Branch  
Ministry of Housing and Social Development

The tenant also stated that the landlord failed to offer to do the move-out inspection required by the Residential Tenancy Act, and instead did it on her own without the tenant present. The tenant therefore believes that the landlord has lost the right to claim against the security deposit for damages and therefore should have to pay double the security deposit to the tenant as the deposit was not returned within the 15 day time frame set out in the Residential Tenancy Act.

The tenant further stated that the only plants that were removed were ones that had died of natural causes and that they had not been damaged or neglected by the tenants.

The tenant therefore believes that the landlord should pay double the security deposit, plus interest, less the \$402.70 that he has agreed to for cleaning and repairs.

Total amount requested by the tenant \$1977.98.

## Analysis

### Tenant's application

First of all I want to state that the tenant is correct, that by failing to do the move out inspection with the tenant the landlord has waived the right to claim against the security deposit for damages, however I will not be ordering double the security deposit, as the landlord applied for dispute resolution within the time limit set out under the Residential Tenancy Act. The Residential Tenancy Act states that the landlord must pay double the security deposit if they don't apply for dispute resolution within 15 days of the end of the tenancy or the date the landlord receives a forwarding address in writing, whichever is the later, and in this case the landlord did apply within that timeframe.

Therefore since the landlord has waived her right to claim against the security deposit I find in favour of the tenants application in the amount of the security deposit of \$1100.00, plus interest of \$130.68, for a total of \$1230.68, less the \$402.70 that the tenant has agreed to.

I also order that the landlord bear the \$50.00 cost of the filing fee that the tenant paid for his application for dispute resolution.

Total amount allowed in the tenant's application is \$877.98.

## Landlord's application

The landlord has supplied an extensive amount of information including estimates of costs of the damages, missing items, and cleaning; however it is my decision that the amount claimed by the landlord is excessive as the landlord has not taken into account normal depreciation a normal wear and tear.

This was an 11 year tenancy and over that period of time the landlord has to expect a substantial amount of normal wear and tear and although it is my finding that the landlord has shown that the damages exceeded normal wear and tear I still have to take what into account what the value of the items would be after normal depreciation and normal wear and tear is taken into account.

Further, the burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. In the landlords application there are many things for which she has no evidence other than her word against that of the tenant.



## Dispute Resolution Services

Page: 5

Residential Tenancy Branch  
Ministry of Housing and Social Development

That being said it is my finding that the landlord has shown “on the balance of probabilities” that the amount of damages and cleaning required after the tenants vacated is more than the amount that the tenant has estimated.

It is my decision therefore that I will allow an amount equal to the full security deposit plus interest held by the landlord.

I further order that the tenant bear one half the cost of the \$100.00 filing fee paid by the landlord, I will not allow the full filing fee as the amount of the claim that I have allowed is less than the \$5,000.00 at which the fee goes from \$50.00 to \$100.00.

The tenant has already agreed to allow the landlord to keep \$402.70 of the security deposit plus interest and therefore the amount allowed in the landlords claim is \$877.98

### Conclusion

I have set off the \$877.98 allowed in the tenants claim against the \$877.98 allowed the landlords claim and I will be issuing no orders in favour of either party.

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: December 21, 2009.

---

Dispute Resolution Officer