



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with an application by the Landlord for monetary orders arising from the Tenant breaking a fixed term lease early, for cleaning the rental unit and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues(s) to be Decided

Did the Tenant breach the term lease, entitling the Landlords to monetary compensation?

Is the Landlord entitled to compensation for cleaning the rental unit?

### Background and Evidence

On or about November 1, 2009, the parties entered into a term Tenancy Agreement for one year, ending on October 31, 2010. The Tenant paid the Landlord a security deposit of \$390.00 in October of 2009.

The Tenant had difficulties in the rental unit arising from the noise created by another renter in the building (the "other renter"). The other renter lived below the Tenant. The Tenant verbally complained to an Agent for the Landlord about the noise from the other renter.

An Agent for the Landlord told the Tenant they were going to Dispute Resolution to have the other renter evicted. The Tenant wrote a letter to the Landlord, dated January 21, 2010, and complained about the noise from the other renter. The Tenant explained in the letter that the other renter played excessively loud noise on several occasions, that she had called the police, and that the other renter had verbally harassed and

swore at the Tenant and this made her feel threatened. The Tenant concluded the letter by explaining she would be moving out on February 1, 2010, unless the other renter moved out.

The Landlord had apparently issued the other renter with a Notice to End Tenancy and a hearing was held on January 29, 2010, regarding the Notice. The Landlord and the other renter came to a mutual agreement which was recorded in the decision issued on January 29, 2010. As part of the settlement, the other renter was to, "... control his behavior and not engage in loud yelling or make loud noises that disturb other residents."

The Tenant testified that the noise remained the same after this and in fact, the other renter began threatening her and creating more noise. In or around the middle of March 2010, the Tenant again wrote to the Landlord and explained she could no longer sleep in the rental unit and was exhausted. She informs the Landlord she is moving out at the end of March 2010.

The Tenant explains in this letter that she no longer feels safe issuing complaints to the Landlord as doing so only seemed to heighten the resentment towards her from the other renter. She states she has not had quiet enjoyment of the rental unit and is not able to stand this any longer. The Tenant then vacated the rental unit at the end of March 2010.

The Landlord was able to re-rent the unit by the 15 of April, 2010. The Landlord submits that the Tenant did not give the Landlord 30 days Notice she was ending the tenancy, and requests a monetary order for two weeks rent in the amount of \$390.00.

The Landlord is also claiming that the Tenant did not have the carpets cleaned and did not clean the kitchen very well. The Landlord requests \$180.00 for these.

The Tenant agreed to pay the Landlord the \$180.00 for the cleaning bills.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is entitled to the costs of cleaning the rental unit as agreed to by the Tenant.

However, I find the Tenant has complied with section 45(3) of the Act and I dismiss the Landlord's claim for the two weeks of rent.

In the normal course of a fixed term tenancy neither party is able to end the tenancy, unless done so in accordance with the Act. Section 45(3) of the Act states:

If a landlord has failed to comply with a material term of the tenancy agreement ... and has not corrected the situation within a reasonable

period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I find that the Tenant's letters of January and March of 2010 informed the Landlord that there was non-compliance with a material term of the tenancy agreement, that is, a failure to ensure the Tenant had quiet enjoyment of the rental unit. I find that in this particular circumstance these letters gave the Landlord the notice and substantially complied with the provisions of section 45(3) of the Act in order to end the tenancy.

This is not to say the Landlord acted improperly here, but rather, the other renter the Landlord was dealing with made it extremely difficult for the Landlord to provide the Tenant with the quiet enjoyment required under the Act.

Therefore, I allow the Landlord to retain **\$205.00** from the security deposit in satisfaction of the claim, comprised of \$180.00 for cleaning the carpet and the rental unit, and \$25.00 for half of the filing fee for the Application, as the Landlord was only partially successful in the claim.

I order the Landlord to return the balance of **\$185.00** to the Tenant, and in accordance with the policy guideline, I grant and issue the Tenant a monetary order in those terms.

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: August 20, 2010.

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Dispute Resolution Officer