



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit and a cross-application by the tenant for an order for the return of double her security deposit. Both parties participated in the conference call hearing.

### Issues to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the tenant entitled to the return of double her security deposit?

### Background, Evidence and Analysis

The tenancy began on January 1, 2007 and ended on or about August 2, 2010. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$350.00. I address the landlord's claims and my findings around each as follows.

- [1] **Lawn damage.** The landlord seeks to recover \$200.00 for damage to her lawn. The landlord claimed that the tenant's dog had urinated on the lawn throughout the tenancy, which had required the landlord to re-seed the lawn each spring. The landlord provided photographs of the lawn showing that several areas were damaged. The tenant testified that in the past she has paid for the cost of grass seed and argued that because the landlord permitted her to have a dog and use the back yard, she cannot be held responsible for damage to the lawn. The tenant

also claimed that the landlord had used pesticides which had killed the lawn. The landlord argued that she had not used pesticides since she had last re-seeded the lawn. I find that the fact that the landlord permitted the tenant to have a dog does not excuse the tenant for damage caused by the dog. I am not persuaded that the damaged parts of the lawn were caused by pesticides as the tenant provided no evidence to show that pesticides had been used in the past year. As the tenant has clearly acknowledged damage done by her dog in the past by paying for grass seed, I find it more likely than not that the tenant's dog caused the damage shown in the landlord's photographs. In the absence of invoices showing the actual cost of materials and an estimate of the time involved, I find the landlord's claim to be high. I find that \$150.00 will adequately compensate the landlord and I award her that sum.

- [2] **Cleaning.** The landlord seeks to recover \$100.00 as the cost of cleaning the rental unit. The landlord claimed that the tenant had failed to adequately clean walls, shelves, ledges, windows, floors and cupboards and provided a photograph of a soiled sponge after having wiped a window ledge and a photograph of dog hair on the walls. The landlord also provided a photograph of mack tack on the kitchen cupboard and testified that it had to be removed with a razor blade. The landlord claimed to have spent 4-6 hours cleaning. The tenant testified that she spent 2 days cleaning the unit and argued that the landlord did not perform a move-out condition inspection and that had she done so, the tenant would have done whatever additional cleaning was required. Although the landlord is required to conduct a move-out condition inspection of the unit and although failure to do so extinguished her claim against the security deposit, this does not prevent the landlord from making a claim for the cost of repairs or cleaning. There are few photographs showing the condition of the rental unit, but the photographs available show several areas which required further cleaning. The tenant was responsible to ensure that the unit was thoroughly cleaned at the time she moved out and I find that she did not adequately clean the unit. However, in the absence of photographic evidence showing problems beyond dog hair, soiled ledges, mack

tack and broken glass, I find the landlord's claim to be high. I find that \$60.00 will adequately compensate the landlord for cleaning and I award her that sum.

- [3] **Garbage removal.** The landlord seeks to recover \$60.00 as the cost of removing garbage and discarded items left by the tenant at the end of the tenancy. The landlord provided photographs of items left behind at the end of the tenancy which included boxes, furniture, glass and other miscellaneous items. The landlord provided a receipt showing that she had paid \$60.00 for garbage removal. The tenant claimed that some of the items had been left by previous tenants and that she had been under the impression that the city would collect this garbage. I find that much of what the landlord paid to remove was the tenant's personal belongings and that the landlord is entitled to recover the cost of removing the items. I accept that the city's garbage collection service would limit the amount of garbage they would collect each week and that the volume of abandoned items prevented the landlord from utilizing the city's garbage collection service. I award the landlord \$60.00.

- [4] **NSF cheque charge.** The landlord seeks to recover \$42.50 in bank charges resulting from an NSF cheque. Although there were several instances in which a cheque was returned for insufficient funds, the landlord acknowledged that on one occasion the bank reversed the charges levied against her. On the occasion in question, the landlord deposited a cheque on the 31<sup>st</sup> of the month, the date in which rent was due, and the tenant had not yet transferred funds to cover the cheque. The tenant claimed that she had a longstanding arrangement with the landlord whereby she would make cheques payable on the 31<sup>st</sup> of the month but the landlord would not negotiate the cheque until a later date. The landlord insisted that rent has always been due on the 31<sup>st</sup> of each month. I find insufficient evidence to show that the parties had a longstanding agreement that cheques would not be negotiated on the date indicated on the cheque face. In light of the fact that writing a cheque on an account in which you have inadequate funds is a

fraudulent, I find that the tenant must bear the cost of the NSF fee. I find the fee to be reasonable and I award the landlord \$42.50.

- [5] **Unpaid rent.** The landlord seeks to recover \$35.00 in unpaid rent for the month of June. The parties agreed that the tenant was obligated to pay \$710.00 per month in rent and that for each month in which there was an additional occupant in the unit, an additional \$25.00 would be payable. The landlord testified that in the month of June the tenant paid just \$700.00 in rent and did not pay an additional occupant fee although there was another occupant who was storing his belongings in the rental unit at that time. The landlord claimed that the other occupant also had a key to the rental unit. The tenant argued that although the other occupant may have had a key and stored his belongings in the unit during the month, he was not resident in the unit. The tenant claimed that she had paid a guest fee in the months of May and July despite there being no other occupants during that time and that those overpayments more than compensate the landlord for any additional occupant fee and the shortfall in rent. The tenant testified that it was her understanding that if an occupant stayed with her and paid her rent, she was obligated to pay the additional occupant fee. The landlord testified that her understanding of their agreement was that if an occupant had a key and kept belongings in the unit, the additional occupant fee would be payable. The landlord bears the burden of creating a written tenancy agreement with terms which are clearly understood. In this case, although there is clearly an agreement that an additional fee should be payable, there is significant uncertainty as to what triggers the payment of that fee. As the landlord bore the responsibility of ensuring that the terms were clear, I find that interpretation of this oral agreement must be interpreted against the landlord's interests. I find insufficient evidence to prove that an additional occupant fee was triggered for the month of June and therefore dismiss the claim for that fee. The tenant freely paid the additional occupant fee for the months of May and July and I find it unlikely that she would have done so had she not been of the opinion that her guests was indeed an occupant in those months and I therefore find that there has been no overpayment of rent. I find that

the tenant was \$10.00 short on her rent for the month of June and I award the landlord \$10.00.

- [6] **Hot pad damage.** The landlord seeks to recover \$45.00 as the cost of replacing a hot pad she claims was damaged by the tenant. The landlord testified that a previous hotplate burned out and was inoperable because it had not been cleaned and that the current hotplate also has not been cleaned, leading the landlord to believe that it too will stop operating shortly. The landlord testified that the hotplate is approximately one year old. The evidence shows that the hotplate was used on an almost daily basis and I find that daily use of such an appliance will significantly shorten its useful life. I find that the hotplate is nearing the end of its useful life and as it is still functioning, I find no legal basis under which to award the landlord any compensation for its anticipated loss. The claim is dismissed.
- [7] **Repainting baseboard moulding.** The landlord seeks to recover \$50.00 as the cost for paint and labour to repaint moulding in the bathroom of the rental unit. The landlord provided a photograph of the bathroom moulding and testified that it had not been cleaned during the tenancy and was so stained, it had to be repainted. The tenant testified that the stains were caused by leaks in the bathroom and therefore she cannot be held responsible. This tenancy has lasted for approximately 4 years. Residential Tenancy Policy Guideline #37 identifies the useful life of interior paint as 4 years. I find that the paint had no practical useful life remaining and find that the baseboards would have required painting in any event, regardless of whether they were stained. The claim is dismissed.
- [8] **Toilet replacement.** The landlord seeks to recover \$350.00 as the estimated cost of replacing and installing a new toilet in the rental unit. The landlord testified that the toilet was new when the tenant moved in and that she has not yet replaced the toilet. The tenant testified that the toilet was old and that she believes the crack may have been there at the time she moved in. The landlord bears the burden of proving on the balance of probabilities that the tenant caused the damage to the toilet. I am not satisfied that any action or neglect of the tenant caused the crack

as it seems equally possible that a poor installation or faulty product could have caused the crack. I dismiss the landlord's claim as unproven.

- [9] **Carpet cleaning.** The landlord seeks to recover \$50.00 as the estimated cost of shampoo the carpet in the rental unit. The tenant acknowledged that she did not shampoo the carpet at the end of the tenancy. Residential Tenancy Policy Guideline #1 states that tenants who reside in a rental unit for at least one year are obligated to steam clean or shampoo the carpet when vacating. I find that the landlord is entitled to the cost of carpet cleaning and I award her \$50.00.
- [10] **Window sill damage.** The landlord seeks to recover \$50.00 as the estimated cost of repairing a window sill in the rental unit. The landlord testified that the tenant's dog was in the habit of climbing on her couch and scratching the window sill and that when the landlord asked her to prevent her dog from scratching the sill the tenant moved her couch so the dog could no longer access the sill. The tenant acknowledged that the dog used to climb onto the couch near the sill but denied that the dog did any damage. The landlord provided no evidence showing the condition of the sill at the beginning of the tenancy and did not conduct a condition inspection or generate a report at the beginning of the tenancy so there is no record of the condition of the sill at that time. I am unable to determine whether the scratches pre-existed the tenancy and accordingly I dismiss the claim.
- [11] **Storage fees.** The landlord seeks to recover \$70.00 as the cost of storing the tenant's belongings in the rental unit for the last two weeks of August. The tenant made an arrangement with the people who currently occupy the rental unit to store her belongings in the rental unit for a period of time after she vacated. The landlord testified that both she and the current occupants were inconvenienced in the month of August because the tenant failed to collect her belongings on August 15, which was the date on which the landlord expected them to have been removed. It is clear that the arrangement to store the belongings was made between the tenant and the current occupants and that it was primarily their living space which was compromised as a result of that arrangement. The landlord

acknowledge that the current occupants paid their full rent in the month of August and I find that as the landlord suffered no loss, there is no basis on which to make an award. The claim is dismissed.

[12] **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.

In summary, the landlord has been successful in the following claims:

Lawn damage	\$350.00
Cleaning	\$ 60.00
Garbage removal	\$ 60.00
NSF cheque charge	\$ 42.50
Unpaid rent	\$ 10.00
Carpet cleaning	\$ 50.00
Filing fee	\$ 50.00
<b>Total:</b>	<b>\$622.50</b>

The tenant seeks an award of double her security deposit. The parties agreed that the tenant provided her forwarding address to the landlord via email on August 2. The landlord made her application on August 10. Section 38 of the Act requires the landlord to either return the security deposit in full or make an application to retain the deposit within 15 days of having received the forwarding address in writing. I find that the landlord acted within the statutorily prescribed timeframe and therefore cannot be held liable for double the security deposit. The tenant's claim is dismissed.

### Conclusion

The landlord has established a claim for \$622.50. I order that the landlord retain the \$350.00 security deposit and the \$10.65 in interest which has accrued to the date of this

judgment in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$261.85. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: September 29, 2010

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Dispute Resolution Officer