



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** *MNSD, FF*

### **Introduction**

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for an order to retain the security deposit. The landlord also applied for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to retain the deposit towards replacing the flooring and removing the trash? Is the landlord entitled to the recovery of the filing fee?

### **Background and Evidence**

The tenancy started on September 01, 2008 and ended on May 30, 2010. The monthly rent was \$3,500.00 payable on the first day of each month. Prior to moving in the tenant paid a security deposit of \$1,750.00.

The rental unit is a log house located in a popular winter resort destination which was also the location of the winter Olympics. The house is approximately 27 years old and was purchased by the landlord in 1989.

The house has a self contained suite. The tenant rented the entire home which was furnished and had the permission of the landlord to sublet the suite. The tenant found a subtenant for the suite on April 01, 2009.

Both parties agreed that the tenancy agreement contained a clause that prevented the tenant from subletting any area of the home other than the self contained suite.

The landlord stated that despite the clause regarding subletting, the tenant sublet bedrooms in the home that he was not permitted to. This resulted in excessive traffic to and from the home and an overuse of the facilities. The occupant (subtenant) of the suite testified that the tenant had subtenants in the main part of the home as well. He stated that when he moved in there was a female living in the main area of the home. She moved out in June of 2009. In December 2009 another female moved in for 3-4 months and during the winter Olympics a volunteer stayed at the unit for a month.

The tenant agreed with the testimony of the occupant of the suite. However, he stated that the first girl was a friend who did not pay rent. The second girl was a sub tenant who paid rent while the volunteer stayed for the duration of the Olympics and gave the tenant some event tickets in lieu of rent.

The landlord stated that a lot of damage was done to the home by the increased number of occupants. The landlord is claiming the security deposit towards the cost she incurred to replace the flooring and for the removal of trash. The landlord stated that the carpet was wet and the sub floor was damaged. She also stated that the tenant left behind dirty bed linen which also had cigarette burns. The landlord filed photographs showing that the exterior wooden stairs were worn down; the mattress had a cigarette burn, some damage was done to a door and a kettle was left behind. The landlord also filed photographs of two items of cutlery found lodged in a drainage pipe.

The landlord filed an invoice for garbage removal dated August 31, 2010 in the amount of \$400.00. She also filed several invoices for the replacement of the flooring dated September 2010 for a total amount in excess of \$5,000.00

The tenant stated that the flooring was old and he was not aware of any damage to the sub floor. He also stated that the house contained several items belonging to the landlord and he had removed all of his belongings. He filed photographs to demonstrate the condition of the home as he left it at the end of the tenancy. The photographs do not show any garbage left behind by the tenant.

### **Analysis**

Based on the sworn testimony of both parties, I find that the tenant did sublet areas of the unit that he was not permitted to sublet, for a portion of the tenancy, thereby breaching a term of the tenancy agreement. However, given the time and duration of the sublet periods, I do not find that the number of people in the home was excessive and I do not find that the facilities were overused due to the subletting. While the tenant breached a term of the tenancy agreement, the landlord had the option of ending the tenancy as soon as she found out.

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the flooring. As per this policy, the useful life of flooring is ten years. The landlord stated that she had purchased the home in 1989 and had not replaced the flooring since then.

Therefore by the end of the tenancy in 2010, the flooring had outlived its useful life and needed to be replaced regardless. Accordingly, the landlord's claim for the replacement of the flooring is dismissed.

Based on the photographs filed by both parties, I find that the tenant did not leave a significant amount of trash behind. The landlord stated that the bed linen was dirty and soiled and needed to be discarded. The landlord was explicit in describing her need to remove the soiled bed linen immediately for safety reasons. The tenant also left behind a kettle.

The landlord removed garbage from the home on August 31, 2010 and incurred an expense of \$400.00. Since the tenancy ended three months prior to the removal of garbage and the tenant left behind an insignificant amount of unwanted belongings, I find that the landlord is not justified in charging the tenant \$400.00 for removal of garbage.

However based on all the evidence I find that the tenant breached the contract by subletting a portion of the unit and causing some damage to one of the doors.

*Residential Tenancy Policy Guideline #16* states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Accordingly, I will award the landlord \$100.00 as nominal damages.

The landlord has not proven her case and must bear the cost of filing this application.

I order that the landlord retain \$100.00 of the security deposit of \$1,750.00 and interest of \$9.61 in satisfaction of the claim and I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of \$1,659.61. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order in the amount of **\$1,659.61**

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 28, 2010.

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Dispute Resolution Officer