



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNSD MNR MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order to keep all or part of the pet and security deposits, for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for the cost of this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on July 9, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on July 14, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord attended the teleconference hearing, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form. The Landlord testified that she did not receive a copy of the Tenant's evidence.

### Issues(s) to be Decided

1. Is there a balance due the Landlord for unpaid rent or utilities at the end of the tenancy?
2. Has the Landlord proven entitlement for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

### Background and Evidence

The parties entered into a month to month written tenancy agreement effective October 1, 2007. The Tenant vacated the unit June 30, 2010 and turned her keys over to her neighbour who subsequently turned them into the Landlord July 1, 2010. Rent was payable on the first of each month in the amount of \$825.00. The Tenant paid a security deposit of \$412.50 and a pet deposit of \$200.00 on September 28, 2007. The Tenant

attended and signed off on the move in inspection report on September 29, 2007. The Landlord did not schedule a move-out inspection time with the Tenant and did not issue a final notice of inspection. The Landlord stated that they were waiting for the Tenant to come to their office and advise them she had finished moving in order to do the inspection.

The Landlord advised they are only seeking to retain a portion of the deposits to cover the \$274.00 of charges pertaining to their move out charge form they submitted into evidence. The Landlord stated that after the Tenant vacated the unit they removed all the carpet and began renovations to install laminate flooring on July 2, 2010. The rental unit was not cleaned prior to the renovations rather one cleaning person attended the unit after the renovations on July 15, 2010 for approximately 1 hour to clean the unit. There were 4 bi-fold doors that were all off their tracks. These doors were approximately 25 – 30 years old and it took the maintenance person approximately 45 minutes to re-install the doors. The Landlord is seeking \$110.00 for the cost to replace two plastic bedroom blinds and to clean the cloth blinds in the living room. The cloth living room blinds were cleaned after the renovations. The Landlord did not submit evidence of the age of these blinds and noted that they were listed on the move-in inspection report as being in good condition. The Landlord confirmed that the amounts charged which comprised of the \$274.00 claim were all pre-determined amounts that are set by their head office regardless of the amount of time it requires to complete the work.

### Analysis

The Landlord testified they did not receive copies of the Tenants evidence. A respondent who does not provide the applicant with copies of their evidence prior to the hearing is a contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the applicant Landlord has not received copies of the Tenant's evidence I find that the Tenant's evidence cannot be considered in my decision, pursuant to section 11.5(b) of the *Residential Tenancy Branch Rules of Procedure*.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Landlord has sought \$274.00 which consists of \$85.00 for one hour of cleaning the unit and living room blinds, \$100.00 for two bedroom blinds that were damaged or missing, and \$99.00 for 45 minutes for the maintenance staff to re-hang 4 bi-fold doors and replace one electrical face plate and a door knob.

The Landlord testified that the Tenant gave the keys to the rental unit to her neighbour and that this neighbour did not return the keys to the Landlord until July 1, 2010. If that was the case I question why the move-out inspection report indicates the Landlord conducted the move out inspection report on June 28, 2010, in the absence of the Tenant, and it notes that the tenancy ended June 30, 2010. The Landlord also stated that the renovations did not commence until July 2, 2010 and the cleanup did not occur until July 15, 2010 after the renovations. Based on the evidence before me the Tenant had legal possession of the rental unit until June 30, 2010, and therefore I find there is insufficient evidence to support or refute whether the Tenant returned on June 29 or June 30<sup>th</sup> to clean the unit after the Landlord inspected it on June 28, 2010. A tenant would not be held responsible for one hour of cleaning @ \$85.00 when the cleaning was performed after the Landlord renovated the unit.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item. The Landlord is seeking \$100.00 for the cost of plastic blinds however there is insufficient evidence to support the age of the original blinds and there is no evidence to support if these blinds were replaced and at what cost.

The evidence supports the Landlord did not offer the Tenant two opportunities to attend a move-out inspection nor did the Landlord issue a final notice of inspection which is a violation of section 35 of the Act. Based on the aforementioned the Landlord is subject

to section 36 (2) of the Act which states that if the move-out requirements are not met the right of the landlord to claim against a security deposit or pet deposit for damage to residential property is extinguished.

Based on the above, I find the Landlord's application for \$274.00 must fail and I hereby dismiss their application. As the Landlord has not been successful with their application I decline to award recovery of the filing fee.

Having dismissed the Landlord's claim in its entirety, the Landlord is hereby ordered to return the Tenant's security and pet deposits plus interest of \$11.61 for a total amount of \$624.11 (\$412.50 + \$200.00 + \$11.61).

### Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$624.11**. The order must be served on the Landlord and is enforceable through the Provincial Court as an order of that Court.

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: November 22, 2010.

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Dispute Resolution Officer