



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes**

Landlord: MNSD, MNDC, FF  
Tenant: MNSD

### **Introduction**

This hearing was convened by way of conference call to deal with cross applications filed by the landlord and the tenant. The landlord has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for a monetary order for double the amount of the security deposit.

The tenant and an agent for the landlord company both attended the conference call hearing. The parties both gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence. All evidence and testimony has been reviewed and is considered in this Decision.

### **Issues(s) to be Decided**

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to an order permitting the landlord to retain the security deposit in partial satisfaction of the claim?

Is the tenant entitled to a monetary order for double the amount of the security deposit?

### **Background and Evidence**

This fixed-term tenancy began on March 15, 2010 and was to expire on September 1, 2010. Rent in the amount of \$810.00 per month was payable in advance on the 1<sup>st</sup> day of each month, \$10.00 of which is for parking.

The tenant testified that the landlord's agent approached her and asked to speak to the tenant about problems with the tenant's son. She then received a breach letter on June 29, 2010. She stated she asked the landlord's agent to give her a notice to end the tenancy so she could give it to her social worker, and she promised to give it but never did. She further testified that the landlord's agent told her she was not welcome there and had to move by July 29, 2010. The tenant vacated the rental unit on July 29, 2010 and returned the keys to the landlord's agent personally that day. She further testified that she cleaned the rental unit prior to vacating.

The tenant, however, also provided a written document outlining the events, which states that she moved from the unit on August 1, 2010.

The tenant further testified that she gave the landlord's agent an address in writing to send the security deposit to on August 1, 2010. She also stated that the landlord's agent wanted her to provide her social worker's phone number, but she refused to do so. In the written document provided from the tenant, the tenant states that she asked for the security deposit on August 1, 2010 and the landlord responded "with a bad attitude" but the document makes no mention of providing an address in writing.

She further stated that the parties did a walk-through of the unit, but no condition inspection report was completed.

The landlord's agent testified that she has a letter dated 08/07/10 requesting the security deposit, but it does not contain an address to send it to. She stated she called the tenant asking for the phone number of the social worker, but she refused to provide it. She stated that the tenant moved out of the rental unit without giving proper notice.

The landlord's agent further testified that she and another employee of the landlord went to the unit on July 23, 2010 and gave the tenant's son a notice to show the unit on July 24 to perspective tenants.

Another notice was given to the tenant on July 27, 2010, a copy of which was provided in advance of the hearing. This notice states that the landlord will be entering the suite on July 29, 2010 between 12 – 4 pm to inspect the suite – Final Inspection. The agent was not there on July 29, 2010 and does not know if the tenant was there or not.

A copy of the move-in/move-out condition inspection report was provided in advance of the hearing, and the landlord's agent testified that the tenant refused to sign it. She stated that the tenant did not clean the unit, the carpet needed cleaning, and a huge pink stain was on the entrance area of the carpet which the landlord had to have repaired. She also provided a copy of a document entitled "Security Deposit Statement" for which the landlord claims 6 hours of cleaning at \$15.00 per hour, or \$90.00; \$392.00 for painting the unit; \$88.48 for carpet cleaning; \$45.00 for drapery cleaning; \$15.00 for cleaning materials; and \$100.00 for repairing the carpet. The total is \$730.48, less the security deposit of \$400.00. The landlord is claiming \$330.48 in addition to the security deposit currently held in trust by the landlord.

### **Analysis**

Firstly, dealing with the end of the tenancy, I do not accept the evidence of the tenant that she had to move because the landlord's agent told her she had to. The *Act* requires that the landlord or the tenant give proper notice to end a tenancy.

I also do not accept the evidence of the landlord that the tenant left without any notice to the landlord. If that were the case, the landlord would have no reason to show the unit to perspective renters on July 24, 2010. Further, I have no application before me by the landlord for loss of revenue. Therefore, I find that the landlord did know that the tenant intended to move, albeit without providing one month's written notification.

I have examined the move-in/move-out condition inspection report. The report shows all rooms were painted, carpets shampooed, curtains washed, and cupboards/closets cleaned at move-in, but absolutely no markings at move-out. The *Act* requires that the landlord provide the tenant with at least 2 opportunities to complete the move-out condition inspection report, which also must be in writing. The landlord only provided one opportunity and does not even know whether or not the tenant attended. The landlord then claimed damages without completing the report at all. Further, she stated that the tenant refused to sign the move-out condition inspection report. The report was not completed at all by the landlord so there was nothing to sign. Further, I find that the landlord's agent's testimony is flawed in that she cannot provide evidence that the tenant refused to sign a form if she was not there to ask her to sign it. Further, the move-out condition inspection must be completed by the parties together, and that ought to provide the tenant with an opportunity to correct any deficiencies in order to protect the tenant's security deposit.

In the circumstances, I find that the landlord has failed to prove that the tenant left the unit in a state beyond reasonable cleanliness. I have no evidence before me that the unit was left in a state beyond reasonable wear and tear. The landlord's agent testified that the carpet had stains and a pink mark that had to be repaired. However, that evidence is disputed by the tenant, and without a proper move-in/move-out condition inspection report, I find that the landlord has failed to establish that the tenant is responsible for any damage or loss suffered by the landlord.

I am not satisfied in the evidence before me that the tenant provided a forwarding address in writing to the landlord. The *Act* requires that the landlord return the security deposit or make application for dispute resolution within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Without any evidence of when the forwarding address was provided to the landlord in writing, I cannot conclude that the tenant is entitled to double the amount of the security deposit.

**Conclusion**

For the reasons set out above, the landlord's application is hereby dismissed in its entirety.

I hereby grant a monetary order in favour of the tenant in the amount of \$400.00.

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, 2010.

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Dispute Resolution Officer