



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNDC, MNSD, MND, FF

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The landlord's application is a request for a monetary order for \$2943.00 a request of the respondent bear the \$50.00 cost of the filing fee that he paid for his application for dispute resolution.

The tenant's application is a request for a monetary order for double his \$2500.00 security deposit for an order of \$5,000.00 and a request that the respondent bear the \$50 cost of the filing fee that he paid for his application for dispute resolution.

### Background and Evidence

This tenancy began on January 28, 2010 and ended on September 30, 2010.

The monthly rent was \$2500.00 per month, and the tenant paid a security deposit of \$2500.00, and a pet deposit of \$3000.00, although it appears that the pet deposit was later returned.

The landlord testified that:

- They had arranged with the tenant to meet at 12 noon on September 30, 2010 to do the move out inspection however the tenant failed to appear for the inspection and instead left the keys inside the locked rental unit.
- Therefore they did do the inspection without the tenant and they found numerous deficiencies that had to be rectified in the rental unit as follows:
  - The carpets were badly stained and had to be cleaned.
  - The tenant had disconnected the alarm inside the alarm box.
  - The furnace filter was clogged with cat hair.
  - There were numerous scratches on walls and doors and as a result they had to be repainted
  - The yard was left in very poor condition with numerous weeds in the yard and flower beds, and even dog feces on the overgrown lawns and as a result extensive yard work was required.
  - The tenant left several burned-out light bulbs in the rental unit and they had to be replaced
  - The windows were left filthy, and there were numerous flies on the windowsills, and therefore the windows had to be cleaned.
  - The house itself had also been left quite dirty, with cat hair all over and even food left in some of the kitchen drawers and as a result it required extensive cleaning.

The landlord is therefore requesting an order as follows:

Carpet cleaning	\$620.00
Furnace filter	\$35.00
Painting	\$1097.00
Yard work	\$320.00
Light bulbs	\$36.00
Window cleaning	\$245.00
House cleaning	\$480.00
Filing fee	\$50.00
Total	\$2993.00

The landlord is further requesting an order allowing him to keep the \$2500.00 security deposit towards this claim.

The tenant testified that:

- At no time did the landlords request his presence to do a move out inspection. He was given no opportunity to do so.
- The only arrangements the landlord made was to meet him on the move out day to pick up the keys, and therefore he left the keys behind for the landlord.
- The landlord had his forwarding address in writing prior to moving out, and therefore could have sent him a letter of final opportunity to inspect, however this as well was never done.
- Since no move out inspection was done, there is no way to accurately compare the condition of the rental unit when he moved out to the condition when he moved in, and he believes he left it in as good condition as when he moved in.
- The carpets were left in the same condition as on move-in.
- The alarm system was not damaged by him, he only unplugged the power on the advice of the alarm company and the landlord had been informed of this.
- The furnace filter had been changed only three months prior to moving out.

- He did not cause any damage to the walls in the rental unit, they were left in the same condition as when he moved in.
- The yard was also left in good condition and did not have an extensive number of weeds.
- All light bulbs were working in the rental unit when he vacated.
- The windows were left in the same condition as when he took possession.
- He left the house in good clean condition.
- He also finds the landlords invoices for window cleaning, yard cleaning, and house cleaning to be suspect because they are all from an MSW contracting with no contact information on the invoices.

The tenant therefore believes the landlord's full claim should be dismissed, and his full security deposit should be returned double, and the landlord should bear the cost of the filing fee that he paid.

### Analysis

It is my finding that the landlord has failed to do both a proper move in inspection, and any move out inspection.

The Residential Tenancy Regulations state:

**20** (1) A condition inspection report completed under section 23 or 35 of the Act must contain the following information:

- (a) the correct legal names of the landlord, the tenant and, if applicable, the tenant's agent;
- (b) the address of the rental unit being inspected;
- (c) the date on which the tenant is entitled to possession of the rental unit;
- (d) the address for service of the landlord;
- (e) the date of the condition inspection;

(f) a statement of the state of repair and general condition of each room in the rental unit including, but not limited to, the following as applicable:

- (i) entry;
- (ii) living rooms;
- (iii) kitchen;
- (iv) dining room or eating area;
- (v) stairs;
- (vi) halls;
- (vii) bathrooms;
- (viii) bedrooms;
- (ix) storage;
- (x) basement or crawl space;
- (xi) other rooms;
- (xii) exterior, including balcony, patio and yard;
- (xiii) garage or parking area;

(g) a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement;

(h) any other items which the landlord and tenant agree should be included;

(i) a statement identifying any damage or items in need of maintenance or repair;

(j) appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;

(k) the following statement, to be completed by the tenant:

I, .....

Tenant's name

[ ] agree that this report fairly represents the condition of the rental unit.

[ ] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:

.....  
.....  
.....

.....  
.....  
.....

(1) a space for the signature of both the landlord and tenant.

(2) In addition to the information referred to in subsection (1), a condition inspection report completed under section 35 of the Act *[condition inspection: end of tenancy]* must contain the following items in a manner that makes them clearly distinguishable from other information in the report:

(a) a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;

(b) if agreed upon by the landlord and tenant,

(i) the amount to be deducted from the tenant's security deposit or pet damage deposit,

(ii) the tenant's signature indicating agreement with the deduction, and

(iii) the date on which the tenant signed.

At the beginning of the tenancy the landlord failed to produce a proper move in inspection report, and although there was a document called a "deficiency list" it did not come anywhere near to meeting the requirements of the move in inspection report.

Further although there is contradictory evidence from the landlord and tenant as to whether a move out inspection time was arranged, the landlord failed to offer a second and final opportunity to inspect as required in the Residential Tenancy Act, and Regulations.

Therefore since neither of these reports was done as required, it is difficult to determine whether the condition at the end of the tenancy was significantly different than the condition at the beginning of the tenancy and therefore I will only allow a small portion of the landlords claim.

I deny the claims for carpet cleaning, furnace filter, painting, and window cleaning, as there is insufficient evidence to determine whether the condition at the end of the tenancy was significantly different than the condition at the beginning of the tenancy.

I also deny the claim for alarm repair because I am not convinced it was damaged due to any negligence on the part of the tenant.

I will allow a portion of the landlords claim for cleaning and yard work. Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case however it is my decision that the landlords have shown that the tenants failed to meet the "reasonable" standard of cleanliness required. The photo evidence provided by the landlord shows that both the yard and the house were left in need of significant amount of cleaning.

It is my decision therefore that I will allow 75% of the amount claimed for house cleaning, and yard work, for a total of \$375.00.

I will not allow the landlords claim for the filing fee, as I have only allowed a small portion of his claim.

### Conclusion

Therefore since I have only allowed \$375.00 of the landlords claim, the landlord must return the remainder of the security deposit to the tenant. The tenant paid a security deposit of \$2,500.00, and therefore the landlord must return \$2125.00 to the tenant.

I further order that the landlord bear the \$50.00 cost of the filing fee paid by the tenant.

I will not order that the landlord pay double the security deposit, because the landlord did apply for dispute resolution within the 15 day time limit required under the Residential Tenancy Act.

Total order issued \$2175.00.

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: February 11, 2011.

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Residential Tenancy Branch