



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDC, FF, MNDC

### Introduction

This hearing dealt with applications from both the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

Both parties attended this face-to-face hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant confirmed that she received a copy of the landlord's dispute resolution package that the landlord sent by registered mail on December 16, 2010. The landlord confirmed that he received the tenant's dispute resolution hearing package that the tenant sent by registered mail on February 10, 2011. Both parties provided copies of confirming Canada Post Tracking Numbers for their service of these packages and their evidence packages. I am satisfied that both parties served these documents to one another in accordance with the *Act*.

### Issues(s) to be Decided

Which of the parties is entitled to the tenant's security deposit? Are either of the parties entitled to monetary awards for losses or damage arising out of this tenancy? Is the landlord entitled to recover his filing fee for his application from the tenant?

### Background and Evidence

This tenancy commenced as a nine-month fixed term tenancy on July 1, 2009. Monthly rent was set at \$700.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$350.00 security deposit paid on June 9, 2009 and her \$150.00 pet damage deposit paid on June 3, 2009.

The parties disagreed as to when the landlord provided the tenant with a copy of their Residential Tenancy Agreement. The landlord provided an undated, but signed written copy of this Agreement which he testified he provided to the tenant within the first week of the tenancy. The tenant testified that she did not receive this Agreement until after she notified the landlord on October 26, 2010 that she intended to vacate the rental unit by November 30, 2010. She was uncertain as to whether the signature on the Agreement was hers and testified that she doubted she would have signed an Agreement and left the date beside her name blank.

The landlord testified that no joint move-in inspection was conducted at the commencement of this tenancy. He said that he gave the tenant a blank copy of a condition inspection report and asked her to fill it out and return it to him. He said that she did not do so. The tenant denied ever having been given this blank condition inspection report.

The landlord applied for a monetary award of \$157.20 to compensate him for professional carpet cleaning and general cleaning of the rental unit that he incurred at the end of this tenancy. He submitted undisputed receipts totalling that amount. He also requested authorization to retain that amount from the tenant's security and pet damage deposits for the damage arising out of this tenancy.

The tenant applied for a monetary award of \$700.00. She requested the return of her security and pet damage deposits plus another \$200.00, because the rental unit was not provided to her in clean condition when she commenced her tenancy. She provided oral and written evidence to support her assertion that she left the rental unit in similar or better condition than when she started her tenancy.

### Analysis

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and invoices, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be

issued and provided to the tenant. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

As was noted by the tenant, section 24(2) of the *Act* reads in part as follows:

***Consequences for tenant and landlord if report requirements not met***

***24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord***

*(a) does not comply with section 23 (3) [2 opportunities for inspection],*

*(b) having complied with section 23 (3), does not participate on either occasion, or*

*(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

The landlord admitted that no joint move-in condition inspection was conducted and that he did not complete a move-in condition report. Responsibility for completing this report rests with the landlord.

The tenant submitted undisputed written evidence that she provided the landlord with a copy of her own July 1, 2009 move-in condition inspection report on October 26, 2010 when she provided her written notice to end this tenancy on November 30, 2010.

Although the landlord testified that the tenant refused to participate in a joint move-out condition inspection on November 30, 2010, the issue in contention regarding the move-out inspection involves the tenant's refusal to sign the move-out condition report. I do not find that the tenant abandoned the rental unit. Rather, I find that the tenant refused to sign a very incomplete inspection report because she was concerned that by doing so she would waive her rights to claim on her security deposit on the basis that the premises were not clean when she commenced her tenancy. After the tenant refused to sign the report, the landlord did not take steps to complete the report, but wrote that the carpet was dirty and that the "tenant did not clean anything" and refused to sign any papers.

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions...*

In addition to the manner and tone (demeanour) of the witness' evidence, I have considered their content, and whether it is consistent with the other events that took place during this tenancy.

The tenant's demeanour during the hearing has convinced me of her credibility. She answered all questions asked of her in a calm and candid manner and provided a consistent account of what happened. I find the tenant's evidence more credible than that provided by the landlord with respect to her claim that the landlord never gave her a condition inspection report to complete at the commencement of the tenancy. Her assertion that she did not receive any such document is consistent with her July 1, 2009 account of the condition of the rental unit that she claimed to have prepared shortly after she moved into the rental unit. I also find the tenant's evidence more credible than that of the landlord with respect to the condition of the rental unit when she commenced her tenancy. Her account of the condition of the rental unit was consistent with the written evidence she provided.

The tenant also provided supporting written evidence from an individual who witnessed the condition of her rental unit when she commenced her tenancy. Although we attempted to connect with that individual during the hearing and were unsuccessful in reaching him, the landlord did not dispute that this individual would confirm the information contained in his letter entered into evidence by the tenant.

The landlord's evidence, on the other hand, did not have the same element of credibility. For example, the landlord did not provide consistent evidence regarding the condition of the rental unit at the commencement of the tenancy. Early in the hearing he testified that the previous tenant left the rental unit in "pretty good condition" prior to

this tenancy commencing. In his final statement, the landlord said that the rental unit was not in the best condition when the tenant commenced her tenancy.

The landlord's statement that both he and the tenant did not care about conducting a joint move-in condition inspection does not set aside his responsibility to conduct an inspection and provide a copy of the report of that condition to the tenant. Even if I were to accept the landlord's claim that he gave the tenant a blank condition inspection report, this does not comply with the provisions of the *Act* with respect to inspections of the condition of the rental unit at the start of a tenancy.

There is no requirement in the Residential Tenancy Agreement that the landlord claims to have given the tenant near the beginning of this tenancy or any attachment that the tenant is responsible for having the carpets professionally cleaned at the end of her tenancy. After the tenant provided written notice that she was ending this tenancy, the landlord sent the tenant a written request outlining his expectation that she would professionally clean the carpets in order to obtain her security deposit. In reaching my decision, I have given consideration to the landlord's claim that professional carpet cleaning was necessary because the tenant was keeping two cats in the rental unit. However, I find that the landlord did not provide evidence that would indicate that professional carpet cleaning was a provision of their Residential Tenancy Agreement, an undated Agreement that the tenant claims she did not receive from the landlord. On a balance of probabilities, I find that the tenant likely left the rental unit in similar or better condition than when she commenced her tenancy.

Since I find that the landlord did not follow the provisions of the *Act*, including those involving the move-in condition inspection and inspection report, I find that the landlord is not allowed to claim against the security deposit for damage arising out of this tenancy. I dismiss the landlord's application for a monetary award and authorization to retain a portion of the tenant's security deposit.

I find that the tenant is entitled to obtain a return of her \$500.00 security deposit plus interest. No interest is applicable over this period. I dismiss the remainder of the tenant's claim as she has not identified sufficient grounds to enable me to issue her a monetary award for these items.

Both parties bear the responsibility of their filing fees for these applications.

### Conclusion

I dismiss the landlord's claim for a monetary award for damage and for authorization to retain the tenant's security deposit in partial satisfaction of the monetary award requested.

I issue a monetary Order in the tenant's favour allowing her to recover her \$500.00 in security and pet damage deposits from the landlord.

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.