



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence, to make submissions, and to cross examine each other.

Counsel for the tenant requested an adjournment for an opportunity to submit photographic evidence. He stated that the tenant sought assistance from two advocates who gave her bad advice, and that she only retained his services last week.

I note that the Notice of a Dispute Resolution Hearing from the Residential Tenancy Branch was dated March 16<sup>th</sup>, 2011, and that it included complete instructions concerning evidence and deadlines. The Branch received no response or inquiries from the tenant concerning this matter. I find that the tenant had sufficient time to seek assistance concerning evidence and proper service within more than three months, and that the landlord would be unduly prejudiced by an adjournment. Therefore the hearing proceeded at the scheduled time.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the fixed term tenancy started on June 15<sup>th</sup>, 2010 and was to end June 30<sup>th</sup>, 2011. The rent of \$990.00 was payable on the first of each month and the tenant paid a security deposit of \$495.00. Condition inspection reports were completed at the start and the end of the tenancy; however, the tenant indicated on the move-out portion of the report that she did not agree with the landlord's observations concerning the condition of the rental unit.

In her documentary evidence, the landlord's agent provided a handwritten notice to end tenancy dated February 18<sup>th</sup>, 2011, stating that she would be moving out on February 28<sup>th</sup>, 2011. The landlord's agent testified that the tenant remained in the unit until the date of the move-out inspection on March 4<sup>th</sup>, 2011. She stated that the drapes needed to be dry cleaned and that additional cleaning was required which included all the windows.

She stated that the unit was re-rented for April 1<sup>st</sup>, 2011 and she submitted a monetary claim as follows:

- |   |           |
|---|-----------|
| - Loss of rental income for March 2011: | \$ 990.00 |
| - Dry clean the drapes:                 | \$ 200.00 |
| - Additional cleaning:                  | \$ 300.00 |
| - Total:                                | \$1490.00 |

The tenant testified that she moved out of the unit because she encountered problems with another tenant in the complex who assaulted her. She stated that she had an opportunity to find more suitable accommodations on short notice and that she sought to end the tenancy early with the landlord. She stated that an agreement could not be reached and that she gave the landlord written notice on February 18<sup>th</sup>, 2011 and vacated on February 23<sup>rd</sup>. She said that she did not dry clean the drapes, but that she spent 20 hours cleaning the unit. She stated that she has physical disabilities, but that she did clean all the windows. She stated that in addition to the conflict with the other tenant, the landlord misled her about the heat, which bolstered her reasons for moving out.

Concerning the landlord's obligation to mitigate the loss of rental income, the tenant stated that the landlord left a lot of garbage strewn within the common areas, and that this would deter a prospective from renting in that building.

The tenant's counsel stated that his client's mental and physical disabilities were in part the reasons for ending the tenancy early. He questioned the landlord's agent about any evidence of showing the rental unit in March, to which the landlord's agent replied that she was not required to produce such evidence.

### Analysis

Section 45(2) of the *Residential Tenancy Act* states in part that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

The tenancy agreement is a contract of adhesion drawn by the landlord. Once signed, the tenant is obliged to accept the terms of the agreement without modification. There was no evidence before me that the tenant reported any problems or conflicts with another tenant to the landlord.

A remedy for the tenant would have been to seek assistance through the Residential Tenancy Branch or through dispute resolution if the landlord, once being made aware,

failed to address the issues. The only evidence before me is that the tenant chose to end the tenancy by moving out on February 28<sup>th</sup>, 2011. On the condition inspection report completed at the end of the tenancy, I note that the tenant wrote that she moved out immediately to save nearly \$400.00 per month. Based on the evidence I find that the tenant breached the Act when she gave the landlord short notice on February 18<sup>th</sup>, and in doing so ending a fixed term tenancy prematurely. The landlord's agent did not make a claim concerning the liquidated damages clause on the agreement, and she stated that she found a new tenant for April. I find that the landlord entitled to recover the loss of rent for the month of March.

The landlord's agent bears the burden to prove her claim against the tenant. The tenant agreed that she did not dry clean the drapes. Although I found nothing on the tenancy agreement requiring a tenant to dry clean the drapes, Section 37 of the *Residential Tenancy Act* provides in part that upon vacating a rental unit, the tenant must leave the unit reasonably clean and undamaged, except for reasonable wear and tear. In the absence of receipts from the landlord I award the landlord half the claim for \$100.00.

As for the additional cleaning, the landlord did not provide any receipts to establish the exact amount. The condition inspection report indicates that the tenant argued reasonable wear and tear. The landlord did not claim damage and I find that portion of the tenant's argument irrelevant. Neither the tenant nor her counsel provided details on the tenant's mental and physical disabilities, nor did they provide medical evidence showing that these disabilities prevented the tenant from making alternate arrangements to ensure compliance with Section 37. At the hearing the tenant's testimony was clear and coherent. In the absence of receipts I award the landlord \$150.00 for the additional cleaning specified on the inspection report.

### Conclusion

The landlord's agent established a claim of \$1240.00. I authorize the landlord to retain the tenant's \$495.00 security deposit for a balance owing of \$745.00. Since the landlord's application had merit, I award the landlord recovery of the \$50.00 filing fee in Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$795.00.

This Order may be registered in the Small Claims Court and enforced 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: June 28, 2011.

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Residential Tenancy Branch