



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began in March 2009 at which time a \$1,000.00 security deposit was paid and that the tenancy ended on February 27, 2011. The landlord purchased the rental unit from the developer, the tenant's former landlord, in August 2009. The rental unit was new at the time the tenancy began.

The landlord seeks to recover the cost of replacing the carpet and hardwood flooring in the rental unit, the cost of repairing and repainting walls and door frames and the cost of cleaning the rental unit. The landlord testified that the tenant caused damage to the rental unit which was beyond what may be characterized as reasonable wear and tear and that as a result, new flooring was required. The landlord further testified that the tenant failed to adequately clean the rental unit and that additional cleaning was required.

The tenant testified that while damage may have occurred during the tenancy, it could well have occurred in the 5 months in which he occupied the rental unit prior to the time the landlord purchased the unit and that the purchase price would have reflected the condition of the unit at the time it was purchased, therefore the landlord had not suffered any loss. The tenant gave evidence showing that he had hired a professional cleaner to clean the unit at the end of the tenancy and that while her cleaning may have been deficient in some respects, his responsibility was to leave the unit in a reasonably clean condition, not in perfect condition.

At the end of the tenancy, the parties both signed a document in which the tenant agreed to pay for cleaning costs and the cost of repairing the walls and hardwood. The tenant acknowledged that he had signed the document, but stated that he did so in an effort to settle the differences between he and the landlord and that the costs claimed by the landlord were exorbitant.

### Analysis

First addressing the apparent agreement of the tenant to pay for repair and cleaning costs, in order for a contract to be binding, there must be a certainty of terms. The document in question purports to make the tenant responsible for any charges regardless of the amount of those charges. I find that this agreement is not binding as there is no certainty of terms.

The tenant had been residing in the rental unit for 5 months before the landlord purchased the unit. The landlord cannot have been under the impression that the unit was new or had never been occupied. Although she may have been taxed for the purchase of a new home, it cannot be characterized as having been new and un-lived in prior to the purchase.

The landlord bears the burden of proving on the balance of probabilities not just that there is damage to the unit which was caused by the tenant, but also that she suffered a loss as a result. I accept that the damage alleged may have been caused by the tenant but I am not satisfied that the landlord has suffered a loss. While it may be that her purchase price did not reflect pre-existing damage to the unit, it is equally likely that it did. As there is no evidence showing when this damage occurred, I find that the landlord has failed to prove that she suffered a loss and accordingly I dismiss the claim for the cost of replacing the flooring and repairing the walls.

I also dismiss the claim for the cost of cleaning the carpets. There were stains in the carpets at the time the tenancy began and I am not satisfied that the tenant created additional stains.

The landlord's photographs show that the rental unit was not left in a reasonably clean condition. The tenant may have hired a professional to clean the unit, but I find that the cleaning performed was inadequate. The landlord's photographs show that the appliances and shelves were not cleaned. In her application for dispute resolution, the landlord claimed that 5 people cleaned the unit for a total of 12 hours. At the hearing, she first said that 6 people cleaned for a total of 24 hours and then stated that 5 people cleaned for a total of 15 hours. The tenant was obligated to leave the unit in reasonably clean condition. The landlord testified that she had recently married and that she

wanted to start her married life in a brand new apartment. I find that the landlord had unreasonable expectations of cleanliness and while the cleaning she performed may have taken between 12 and 15 hours, I find that she likely cleaned to a standard beyond what should have been expected of the tenant. I find that 3 hours of cleaning would have brought the rental unit to a reasonable standard. The landlord seeks to recover cleaning at an hourly rate of \$25.00, which she stated she was quoted from a professional cleaner. I find that as the landlord is a layperson, she is not entitled to the same hourly rate as a professional, particularly as I have considered that as a layperson the required cleaning would take 3 hours whereas a professional may not have required as much time. I award the landlord \$54.00 which represents 3 hours of cleaning at a rate of \$18.00 per hour.

The landlord seeks to recover the \$100.00 filing fee paid to bring her claim. I find that had the landlord been reasonable in her claim, this application would likely not have been necessary and I therefore find that the landlord should bear the cost of the filing fee.

### Conclusion

The landlord is awarded \$54.00 and may retain this amount from the security deposit.

Residential Tenancy Policy Guideline #17-2 provides as follows:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

I find that the tenant has not extinguished his right to the return of the deposit as he participated in the condition inspection of the unit at the beginning and end of the tenancy. In the spirit of administrative efficiency and pursuant to the terms of the Residential Tenancy Policy Guidelines, I order that the landlord forthwith return to the tenant the \$946.00 balance of the security deposit. I grant the tenant a monetary order under section 67 for \$946.00. This order may be filed in the Small Claims Division of the Provincial 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 21, 2011

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Residential Tenancy Branch