



# 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 permitting her to retain the security deposit in partial satisfaction of her claim. Both parties participated in the conference call hearing.

The tenants submitted documentary evidence to the Residential Tenancy Branch but did not provide a copy to the landlord. As the landlord did not have an opportunity to examine the tenants' evidence, I did not consider that evidence.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began on March 15, 2011 and ended on July 1, 2011 and that the tenants paid a \$600.00 pet deposit and a \$750.00 security deposit. The parties further agreed that on May 31, the tenants gave the landlord a one month notice to end tenancy, breaching the one year fixed term tenancy agreement.

The parties completed a condition inspection of the unit at the end of the tenancy and both parties signed the condition inspection report. The report states that "Tenants have agreed to pay \$200.00 for cost of cleaning by Monday, July 4 2011 on top of us, landlords keeping the security/pet deposits." [reproduced as written] The parties both signed the condition inspection report but the tenants did not sign the box in which the report stated that they agreed to deductions from the deposits. The landlord maintained that the tenants' signature on the reports indicated their agreement to the above quoted statement. On July 1 the tenants gave the landlord their forwarding address and requested that she return the deposits.

The landlord seeks loss of income for July and August, claiming that she was unable to re-rent the unit for those months. The landlord testified that she had intended to move

out of the country in June, but that her plans fell through so she moved into the rental unit in July and August while she attempted to re-rent the unit. The landlord further testified that the rental unit was not adequately cleaned at the end of the tenancy and seeks to recover \$200.00 for cleaning the unit.

The tenants argued that the landlord should be barred from claiming loss of income because she resided in the rental unit during the months in question and disputed that additional cleaning was required.

### Analysis

While the condition inspection report is signed, the box that specifically authorizes the landlord to make deductions from the security and pet deposits was not signed. I find that the tenants did not agree to any deductions from the deposits and I further find that they did not agree to pay an additional \$200.00 for cleaning costs.

Although the landlord may have intended to re-rent the unit in July and may have made efforts to do so, she benefitted from the vacancy because she was able to live in the rental unit and not pay for living expenses elsewhere. Because of that benefit, I find that she cannot recover loss of income and I therefore dismiss the claim for loss of income for July and August.

The landlord bears the burden of proving that she incurred \$200.00 in cleaning costs. The condition inspection report indicates that the carpet was damaged and that the front and rear entrances were very dirty, but does not indicate that any further cleaning was required. The landlord did not submit any evidence that she hired someone to clean or a record of the time she spent cleaning, nor did she submit photographs to show the condition of the unit. I find that the landlord has not proven on the balance of probabilities that additional cleaning was required or the cost of performing that cleaning. I dismiss the claim for cleaning costs.

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 tenants have not extinguished their right to the return of the deposit as they participated in the condition inspection of the unit. 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 tenants the \$750.00 security deposit and the \$600.00 pet deposit. I grant the tenants a monetary order under section 67 for \$1,350.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord's claim is dismissed and the landlord is ordered to return the security and pet deposits.

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: October 11, 2011

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Residential Tenancy Branch