



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on July 29, 2011. Mail receipt numbers were provided in the Landlord's evidence. Based on the Landlord's submission I find the Tenant has been sufficiently served notice of this proceeding.

The Landlord and Agent appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation and/or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order pursuant to sections 7 and 67 of the *Residential Tenancy Act*?

### Background and Evidence

The parties entered into a fixed term tenancy agreement that began on February 1, 2008 and switched to a month to month tenancy after January 31, 2009. Rent was payable on the first of each month and began at \$900.00 per month. By the end of the tenancy rent had increased to \$966.00 per month. The Tenant paid \$450.00 on February 1, 2008 as the security deposit. The Landlord received a fax from the Tenant on July 12, 2011 which provided the Tenant's forwarding address in writing.

The Landlord affirmed that on May 30, 2011 the Tenant provided her with written notice to end his tenancy as of July 31, 2011. On June 28, 2011 the move out inspection was initially scheduled for June 30, 2011 at 2:00 p.m. and was later changed to 8:00 p.m. on June 30, 2011.

The Landlord advised that when she arrived at the building on June 30, 2011 at approximately 5:00 p.m. she found an envelope in the manager's mailbox with the rental unit keys inside. She attended the unit to find the Tenant had vacated the unit. She attempted to contact the Tenant by phone and left a message to reschedule the move out inspection and to have the Tenant return the parking garage remote control. The Tenant did not attend the move out, even after the final notice was posted, and did not return the remote control. The Landlord conducted the move out inspection on July 3, 2011 in the absence of the Tenant.

The Landlords are seeking the following for damages and referred to their documentary evidence which included, among other things, copies of photos of the rental unit taken July 3, 2011, the move-in and move-out inspection report, and copies of invoices for work performed on the unit:

- 1) \$120.00 for ten hours of cleaning the rental unit as the Tenant did not clean the unit as supported by their evidence. All the walls needed to be washed, the carpets and floors vacuumed, the bathroom needed cleaning, windows and window coverings, and kitchen and all appliances needed cleaning. The cleaning was completed July 3, 2011.
- 2) \$48.00 to clean the four windows (including patio door) and wash all the drapes. This took four hours to complete and was done the same day the unit was cleaned and the move in inspection was completed.
- 3) \$48.00 to repair the accordion closet door. The Landlord advised her husband repaired the door by replacing some of the missing clips and re-attaching all the clips at a different spot at the top of each slat in the door. This door was plastic and the exact age of the door was unknown. This door had been installed prior to her employment which began in 2007. The charge is for four hours at \$12.00 per hour.
- 4) The Tenant failed to return the parking garage remote control. At the beginning of the tenancy the Tenant signed a remote control agreement which indicates he will be charged \$80.00 for a replacement remote plus \$150.00 to have the remotes reprogrammed. The Landlord confirmed there are 31 units in this building and each time a remote control is not returned her husband has to reprogram every remote that is used for the main gate and parking garage gate for security purposes. So they must charge \$150.00 to cover his labour to

reprogram all the remotes for the 31 units. The Landlord confirmed no receipt was provided to support the cost being charged to replace this remote. Her husband completed the reprogramming in July 2011.

- 5) \$117.60 to have the carpets cleaned as per their invoice provided in the evidence. The Landlord pointed out in her photographs the stains and dirt left on the carpets. The cleaning was completed July 20, 2011.
- 6) \$250.00 to repair and repaint walls in the first bedroom, the walk-in closet and the kitchen wall which required washing and sanding before it could be painted. The Landlord could not provide a date of when the unit was previously painted and confirmed it had not been painted since she began her employment in 2007. They had the entire rental unit repainted at a cost of \$896.00 and are seeking only \$250.00 from the Tenant to cover damages he caused.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The actual value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 37*.

Section 32(4) of the Act provides that a tenant is not required to make repairs for reasonable wear and tear. Reasonable wear and tear means the reasonable use of the rental unit by the tenant and the ordinary operation of natural forces.

Section 37 (2) of the Act provides that when a tenant vacates a rental unit, the tenant must (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

After careful consideration of the evidence before me I find the Landlords met the burden of proof to establish the Tenant failed to leave the rental unit reasonably clean and failed to return the parking garage remote in breach of Section 37(2) of the Act.

The Landlord claims \$120.00 for ten hours of cleaning completed July 3, 2011. The evidence supports the cleaning was completed at the same time the move out inspection was completed and on the same day the windows and window coverings were cleaned however there is a separate four hours charged for cleaning four windows and drapes that were laundered in the washing machine. A Tenant is not required to pay for the Landlord's regular duties, such as conducting a move out inspection report; therefore, pursuant to section 67 of the Act, I award the Landlord **\$148.00** for cleaning the rental unit, windows, and drapes.

\$48.00 has been claimed as labour to repair the plastic accordion closet door. There is no evidence before me to indicate the exact age of the door however it is known that this plastic door is greater than four years old. Given the age and useful life of a plastic accordion door I find the evidence supports the door damage is relative to normal wear and tear as plastic can become brittle and crack or break over time. Accordingly I dismiss the Landlord's claim of \$48.00.

The Landlord seeks \$80.00 to replace the remote control and \$150.00 in labour to re-program the remotes for 31 units. I accept the evidence that the Tenant failed to return the remote control causing a loss to the Landlord and that the Landlord re-programmed the other units. There is insufficient evidence to support the actual replacement cost of the remote. Therefore, pursuant to section 67 of the Act I award the Landlord **\$190.00**, which is comprised of \$40.00 for the remote and \$150.00 for labour to re-program the other units.

The evidence proves the Tenant failed to clean the carpets at the end of the tenancy in breach of section 37 of the Act which caused the Landlord to suffer a loss of \$117.60 to pay for them to be cleaned. Accordingly I award the Landlord **\$117.60** for carpet cleaning.

There is insufficient evidence to prove when this rental unit had been last painted however it is known that it has not been painted during the four years the caretaker has been employed. The normal useful life of interior painting is four years and based on the photographic evidence I find the damage requiring painting to be normal wear and tear. Accordingly I dismiss the Landlord's claim of \$250.00 for painting and wall repair.

The Landlord has primarily been successful with their application, therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Cleaning the rental unit, windows and drapes	\$148.00
Replacement and reprogram remote	190.00
Carpet cleaning	117.60
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$505.60</b>
<b>LESS:</b> Security Deposit \$450.00 + Interest from	
Feb. 1, 2008 to Nov. 2, 2008- \$6.18	<u>\$456.18</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$49.42</u></b>

### Conclusion

The Landlord's decision will be accompanied by a Monetary Order in the amount of **\$49.42**. This Order is legally binding and must be served upon the Tenant.

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: November 02, 2011.

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Residential Tenancy Branch