



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order permitting the landlord to keep all or part of the tenant's security deposit and to recover the filing fee from the tenant for the cost of 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 October 03, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form and the landlord was permitted to provide additional evidence after the hearing had concluded. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

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

### Background and Evidence

The landlord testifies that this month to month tenancy started on April 01, 2011 although the tenant did not move into the unit until April 05, 2011. The tenancy ended on August 15, 2011. Rent for this unit was \$600.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$300.00 on April 04, 2011.

The landlord testifies that at the start of the tenancy the landlord and tenant conducted an inspection of the rental unit and the tenant signed an 'examination and acceptance of premises document' which the landlord has provided in evidence.

The landlord testifies that the tenant verbally gave notice to end the tenancy on August 12, 2011. The landlord testifies that no written notice was given as required and the tenant moved from the rental unit on August 15, 2011 without notifying the landlord that he was leaving on this day. The landlord states as the tenant had abandoned the rental unit the landlord was unable to conduct a move out condition inspection with the tenant and the landlords agent carried out the move out inspection in the tenant's absence.

The landlord testifies her agent found the unit had been left unclean. The walls were dirty because the tenant had smoked in the unit even through the agreement stated this was a non smoking unit. The landlord states the carpets had large stains and there were five burn marks left in the carpet from what appeared to be cigarettes. The bathroom was left dirty as was the area around the bed. The landlord explains that this was a furnished unit and the tenant had also failed to wash the privacy curtains in place around the bed and the towels. The landlord states the tenant had also damaged the futon.

The landlord states she had to have the carpets and unit cleaned and seeks an Order to keep the tenants security deposit. The landlord states the tenant sent his forwarding address to her by e-mail in order to forward any mail for him that came to the unit and documentation provided by the landlord also states the tenant left his forwarding address on a piece of paper for his mail when he moved out. The landlord states she sent the tenant a

letter regarding the cleaning required to the unit and the costs for this cleaning of \$180.00 for 20 hours work at \$9.00 per hour and for the carpet cleaning of \$120.00.

The landlord has provided copies of the notes from the move out inspection; notes from the landlord's agent concerning the hours spent cleaning the unit and the charge of \$9.00 per hour for this work and photographic evidence of the cleaning, the carpet stains and the burns in the carpet.

### Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

With respect to the landlord's claim for carpet cleaning and cleaning of the unit, the onus is on the landlord to prove a 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The actual amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

I have no evidence before me with respect to the actual or even estimated amount for cleaning the carpets, and therefore, I find that the landlord has failed to satisfy element 3, of the above test and consequently, the landlord's claim for carpet cleaning cannot succeed.

With respect to the landlord's claim for cleaning the unit, I accept the evidence of the landlord, that her caretaker cleaned the unit for 20 hours at \$9.00 per hour and of the condition of the unit that required this level of cleaning. Therefore, I find the landlord has met the burden of proof in this matter and is entitled to recover the sum of \$180.00 from the

tenant. The landlord is also entitled to recover the \$50.00 filing fee for the cost of this application pursuant to s 7291) of the *Act*.

Section 38(1) of the *Act* states a landlord must file a claim to keep the security deposit within 15 days of either the end of the tenancy or the date the landlord receives the tenants forwarding address in writing. The tenancy ended on August 15, 2011 and the landlord has provided evidence that the tenant left his forwarding address in writing on this day. The landlord did not file her claim until September 30, 2011 outside the 15 day limit. The tenant has not filed an application to recover his security deposit.

However, I find that sections 38(4), 62 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep \$230.00 from the tenants' security deposit to compensate the landlord for cleaning and for the filing fee paid for this application.

### Conclusion

I HEREBY uphold the landlord application in part. The landlord is entitled to keep the sum of **\$230.00** from the tenant's security deposit. The balance of the deposit of \$70.00 must be return to 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: December 23, 2011.

---

Residential Tenancy Branch