



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to applications made by the landlord and by the tenant. The landlord has applied for a monetary order for damage to the unit, site or property; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of this application.

Both parties attended the conference call hearing, provided evidence in advance of the hearing, and gave affirmed testimony. The parties were also given the opportunity to cross examine each other on the evidence. The landlord provided 2 evidence packages, the second of which was not provided to the tenant, nor were any receipts from the landlord's first evidence package. All evidence and testimony provided have been reviewed and are considered in this Decision with the exception of the evidence provided by the landlord that was not sent to the tenant.

### Issue(s) to be Decided

- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Is the tenant entitled to return of all or part or double the amount of the pet damage deposit or security deposit?

### Background and Evidence

This fixed term tenancy began on August 28, 2010 and expired on August 19, 2011. The tenancy ultimately ended on August 18, 2011. Rent in the amount of \$1,295.00 per month was payable in advance on the 1<sup>st</sup> day of each month and there are no rental

arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$650.00 as well as a pet damage deposit in the amount of \$650.00.

The landlord testified that the tenant had agreed in an email that the landlord could keep \$52.00 from the security deposit for rent for the last month of the tenancy. The tenant paid \$700.00 and owed the landlord \$51.94. The rental unit was re-rented on August 22, 2011.

The landlord also provided a written list of damages claimed by the landlord, which includes:

- \$50.00 for the rent for August being 8 days late;
- \$54.25 for the balance of rent owing for August, 2011 ( $\$1299 \div 31 \times 18 \text{ days} = \$775.43$ , less \$700.00 paid by the tenant by cash on August 8);
- \$143.00 for cleaning and travel time for purchases required, being 2.6 hours  $\times$  \$55.00 per hour;
- \$16.80 for the wholesale cost of replacing a mature Wisteria plant;
- \$154.00 for 2.8 hours of the landlord's time at \$55.00 per hour to plant Dog Patch;
- \$12.00 for grass seed (being the amount charged to the tenant which cost \$22.40);
- \$200.00 for Pink Dogwood that was half its size due to the tenant's failure to water the plant;
- \$4.46 to replace light bulbs for the ceiling fan/light in the living room;
- \$6.66 for a key chain replacement;
- \$82.50 for 90 minutes of the landlord's time for cleaning an Antiquity Day Bed that was on the lawn;
- \$1.12 for a lighter to replace the striker in the barbeque which was broken by the tenant;
- \$10.00 for propane for the barbeque;
- \$20.00 for replacing a wooden piece in a drawer in the living room containing an oil stain left by the tenant.

The list also refers to items missing from the rental unit:

- \$42.28 for 12 wooden hangers, which the landlord priced at Home Sense on August 26 at \$7.83 for 5 hangers;
- \$11.18 for 2 long pant hangers which cost \$4.99 each, plus HST;
- \$3.13 for 2 peg hangers which cost \$7.83 for 5 ( $\$7.83 \div 5 \times 2$ );

- \$13.49 for a padlock and key not returned to the landlord;
- \$1.44 to replace shower hooks because one was missing after the tenant moved out.

The landlord also provided before and after photographs of the Antiquity Day Bed. The first picture shows an outdoor bed with what appears to be a lace canopy and round pillows. The other photographs show cherries on the bed, and stains from the cherries. Other photographs provided show dead grass in the yard, grout in the bathtub area that is stained and an oven that has not been cleaned.

The landlord also provided a copy of the tenancy agreement, which states that late fees for rent are subject to a \$50.00 fee. The agreement also specifies that the tenant received 2 full sets of keys for the front door deadbolt and lock within the handle, as well as the back door deadbolt and lock within the handle, plus a key for the East gate, plus a key for the garage which is used for the landlord's storage, barbeque and lawn mower, and that the tenant agrees to pay the replacement cost if lost or damaged. That paragraph is initialled by the landlord and the tenant. The agreement also states that, "Any extraordinary cleaning or replacement that will be required will be billed to the vacating tenant at an hourly rate of \$55.00 plus any costs and will be subtracted from the security deposit."

A copy of the move-in and move-out condition inspection report was also provided by both parties.

The landlord claims \$626.31 for damages.

The tenant testified that a move-in condition inspection report was completed by the parties at the commencement of the tenancy but the landlord did not provide the tenant with a copy of it until after the move-out condition inspection report had been completed. The tenant did not attend the move-out condition inspection but had a friend attend with notice to the landlord.

The tenant also provided a copy of an invoice in the amount of \$120.00 that the tenant paid for a cleaning company. The invoice is dated September 16, 2011 and the tenant testified that the invoice was requested afterwards, and the professional cleaners attended the rental unit to clean prior to move-out. Another invoice was provided dated September 1, 2011 in the amount of \$67.20 (including HST) for 2 hours of cleaning for deficiencies left by the other cleaning company. Another invoice was provided in the amount of \$156.80 for carpet cleaning dated August 18, 2011

The tenant also provided copies of emails exchanged between the parties, wherein the landlord was notified that a friend of the tenant would attend the move-out condition inspection, and that the tenant agreed that the landlord could deduct \$52.00 from the security deposit. The tenant further testified that the landlord's claim for \$50.00 for a late payment of the rent ought not to be ordered because the tenant permitted the landlord to keep \$52.00 from the security deposit.

The tenant further testified that the landlord returned \$673.69 from the deposits held in trust by the landlord by cheque dated September 1, 2011 however the tenant didn't receive it until September 8 or 9. The tenant's forwarding address was provided on the move-out condition inspection report on August 20, 2011. The tenant further testified that the forwarding address was also provided to the landlord by email on August 15, 2011.

The tenant also testified that the photographs provided by the landlord of the Antiquity Day Bed are deceiving, in that the lace canopy and top portions were removed by the landlord before the tenant moved in, although they were present when the tenant looked at the rental unit prior to signing the tenancy agreement. The tenant pointed out that those items are not even mentioned on the condition inspection reports or the tenancy agreement.

Further, it was a very hot and dry summer, and all lawns in the neighbourhood were dry and appeared dead.

The tenant claims \$1,252.62, being double the amount of the security deposit, less the amount returned by the landlord, and recovery of the filing fee for the cost of this application.

### Analysis

Firstly, with respect to the tenancy agreement, the *Residential Tenancy Act* states that landlords and tenants may not contract outside the *Act*, and any attempt to contract outside the *Act* is of no effect. The regulations specify that a landlord may charge a fee for late payment of rent, so long as it's contained in the tenancy agreement, and the fee may not exceed \$20.00. In the circumstances, the tenant permitted the landlord to keep \$52.00 of the security deposit for rent in an email dated August 8, 2011, and therefore, I find that the landlord is entitled to a late fee in the amount of \$20.00.

I further find that the paragraph in the tenancy agreement that states: "Any extraordinary cleaning or replacement that will be required will be billed to the vacating tenant at an hourly rate of \$55.00 plus any costs and will be subtracted from the security

deposit,” is not lawful. The landlord is not permitted under the *Act* to subtract any amount from the security deposit or pet damage deposit without applying for dispute resolution claiming any amounts from those deposits.

The *Act* also states that a landlord must complete a move-in condition inspection report with the tenant and give the tenant a copy of the report and the landlord’s right to claim against the security deposit or the pet damage deposit is extinguished if the landlord fails to do so. In this case, the tenant testified that the landlord did not provide the tenant with a copy of the report, which was not disputed by the landlord. Therefore, I find that the landlord’s right to claim against the deposits for damages is extinguished.

The landlord returned to the tenant \$673.69 by cheque and the tenant permitted the landlord to keep \$52.00 for rent for the last partial month of the tenancy. Having found that the landlord’s right to keep any portion of the security deposit and pet damage deposit for damages has been extinguished, and the landlord has not returned the full amount to the tenant, I must order the landlord to return double the amount of the deposits to the tenant, less \$673.69 and \$52.00, for a total of \$1,874.31 ( $\$1,300.00 \times 2 - \$673.69 - 52.00 = \$1,874.31$ ).

The *Act* does not, however, preclude the landlord from making a claim for damages against the tenant. In order to be successful in a claim for damages, the onus is on the claiming party to meet the 4-part test for damages:

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

The *Act* also states that a tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear. A tenant is not required to leave a rental unit in the pristine condition that the landlord may prefer to make it “move-in ready” for another tenant or for showing purposes; that is the responsibility of the landlord.

I have reviewed the tenancy agreement and the move-in/out condition inspection report and I find no evidence to support the landlord’s claim for missing hangers or a key chain. Therefore, I find that the landlord has not established a claim for those items. The grass seed and plants that the landlord testified were replaced are also not recoverable because the landlord has failed to establish the 4-part test for damages; I have no evidence that the damage or loss exists, or that any damage or loss was the result of the tenant’s failure to comply with the tenancy agreement, or the amount.

Further, the other items claimed by the landlord have not been substantiated by the amount that the landlord is out-of pocket for those expenses.

With respect to the unpaid rent, I find that the landlord has provided an incorrect equation. The rental amount was \$1,295.00 per month, and the tenant moved on the 18<sup>th</sup> day of the month. Therefore, \$1,295.00 divided by 31 days in the month, multiplied by 18 days equals \$751.93. The tenant paid the landlord cash in the amount of \$700.00 and permitted the landlord to keep \$52.00 from the security deposit. That amount has been taken into account above.

Having found that the landlord has established a claim for \$20.00 and the tenant has established a claim for \$1,874.31, the *Act* permits me to offset one amount from the other, and I find it just to do so in the circumstances. Therefore, I hereby order the landlord to pay to the tenant the difference in the amount of \$1,854.31.

Since both parties have been partially successful with the claims before me, I decline to order that either party recover the filing fee for the cost of these applications.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to section 67 of the *Residential Tenancy Act* in the amount of \$1,854.31. This order is final and binding on the parties and may be enforced.

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 20, 2011.

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Residential Tenancy Branch