



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the tenant for an award of the return of double his security deposit and a cross-application by the landlord for a monetary order and an order permitting her to retain the security deposit in partial satisfaction of the claim.

Both parties had originally filed their applications to address issues at unit #202 but at the hearing agreed to amend their claim to include unit #204 in order to address all outstanding issues related to the tenancy. The hearing and this decision therefore address all claims with respect to both units.

### Issues to be Decided

Is the tenant entitled to the return of double his security deposit?  
Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The tenancy originally began in 2008 in unit #204. The tenant paid a \$375.00 security deposit on August 23, 2008. On or about December 1, 2011, the tenant moved from unit #204 to unit #202. His security deposit was transferred from unit #204 and he paid an additional \$17.50 to “top up” the deposit as the rent in unit #202 was higher than he had been paying in the previous unit.

On December 14, 2011, the tenant gave the landlord written notice that he would be ending his tenancy as of December 31. The landlord testified that despite advertising the rental unit, she was unable to secure a new tenant for the month of January and she seeks to recover \$785.00 in loss of income.

The tenant vacated the rental unit on December 31 and testified that he gave the landlord his forwarding address in writing on the same day. The landlord testified that she received the forwarding address in the first week of January. The landlord filed her

application to retain the deposit on February 22, 2011. The tenant seeks an award of double his security deposit.

The landlord testified that the tenant failed to clean carpets in both unit #202 and unit #204. She testified that there were stains on the carpet in unit #204 which predated the tenancy and because she could not remove those stains, the carpet was removed and replaced. The landlord further testified that she cleaned the carpet in unit #202 because it was her practice to clean carpets prior to renting a unit to a new tenant. The tenant argued that he should not be responsible for the cost of carpet cleaning in unit #204 as the carpets were removed and that cleaning was not required for unit #202. The landlord presented an invoice showing that she paid a total of \$200.00 for carpet cleaning, which represents \$100.00 for each of the rental units.

The landlord claimed that the cupboards and bathroom of unit #204 were not adequately cleaned at the end of the tenancy and that there were 2 gouges in the cupboards which had to be repaired and repainted. She seeks to recover \$120.00 paid for cleaning and repairs. The tenant and his witness testified that they left unit #204 in good condition and that no cleaning or repairs were required.

The landlord testified that on or about December 12, she left a Notice of Final Opportunity to Schedule a Condition Inspection on the door of unit #202, which was to advise the tenant that they would be performing an inspection of both units on December 20. The tenant claimed that he did not receive this document.

Both parties seek to recover the filing fees paid to bring their respective applications.

### Analysis

I am not satisfied that the tenant received the Notice of Final Opportunity to Schedule a Condition Inspection. I find it highly unlikely that the landlord would schedule a move-in condition inspection report of unit #202 after she had received notice that the tenant was ending his tenancy and almost 2 weeks after his tenancy in that unit had begun. I find that the tenant has not extinguished his claim against the security deposit.

The landlord acknowledged having received the tenant's forwarding address in early January, yet she did not file an application to retain the deposit until February 22. Section 38(1) of the Act requires the landlord to either file her claim or return the deposit in full within 15 days of having received the forwarding address. Section 38(6) provides that when a landlord fails to comply with section 38(1), the tenant is entitled to an award of double the security deposit. The landlord currently holds a deposit of \$392.50. The tenant is entitled to double this amount plus the \$2.01 in interest which accrued on the

original deposit for unit #204 as well as the \$50.00 filing fee paid to bring his application. I award the tenant \$837.01.

I find that the tenant did not provide adequate notice that he was vacating the rental unit and despite her attempts to re-rent the unit, the landlord suffered a loss of income for the month of January 2012 as a result of this breach. I find that the tenant is liable for this loss of income and I award the landlord \$785.00.

Usually, a tenant is required to clean carpets when a tenancy has lasted for at least one year. However, because the landlord testified that the carpets were cleaned in an effort to remove stains that pre-dated the tenancy and were eventually replaced because those stains could not be removed, I find that the tenant cannot be held liable for the cost of carpet cleaning for unit #204. I find insufficient evidence to show that carpet cleaning was required for unit #202 as the tenant's stay in that unit was very short. Although the landlord may have a practice of cleaning carpets prior to a new tenancy, absent a term in the tenancy agreement whereby the tenant was required to clean the carpet regardless of the length of his tenancy, I find he cannot be held liable for that cost. I dismiss the claim for the cost of carpet cleaning in both units.

The landlord submitted into evidence a letter dated December 1, 2011 in which she stated that the tenant had left "204, fairly clean; except that I asked him to clean stove top. I told him I would clean the oven. He cleaned stove top while I was talking to him." I find that this letter contradicts the landlord's oral testimony that unit #204 was left unclean and required repairs and in light of that contradiction, I find insufficient evidence to prove that cleaning and repairs were required. I dismiss that claim.

I find that the landlord should recover the \$50.00 filing fee paid to bring her application and I award her that sum.

### Conclusion

The landlord has been awarded \$835.00 and the tenant has been awarded \$837.01, leaving a balance of \$2.01 owing by the landlord to the tenant. I order the landlord to repay this sum to the tenant forthwith. I decline to issue an order enforceable in the Court as the cost of enforcement would grossly exceed the amount payable under the order.

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: April 03, 2012

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Residential Tenancy Branch