



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed for a monetary order for unpaid rent, to keep the security deposit in partial satisfaction of the claim, for money owed or compensation under the Act or tenancy agreement and to recover the filing fee for the Application.

The Tenant filed for a monetary order for return of double the security deposit under section 38 of the Act and for money owed or compensation under the Act or tenancy agreement.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Preliminary Matter

The Tenant had misspelled the Landlord's business name on her Application. Nevertheless, it was served correctly on the Landlord who had an opportunity to reply to the Tenant's Application. With the consent of both parties, I have amended the style of cause in this matter with the correct spelling of the Landlord's business name.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary order sought?

Is the Tenant entitled to the return of double the security deposit or another monetary order?

### Background and Evidence

This tenancy began on April 1, 2010, with the parties entering into a written tenancy agreement. The Tenant paid a security deposit of \$380.00 on March 31, 2010, and the monthly rent was \$750.00, payable on the first day of each month. Under the written tenancy agreement the Tenant was also required to pay \$10.00 per month in parking fees. This \$10.00 parking fee was written into the application for renting, the tenancy agreement, and rent increase forms, over the course of the tenancy. The Tenant was also required to pay a late fee of up to \$25.00, as well as clean the carpets and window coverings, according to clauses in the tenancy agreement.

The Tenant gave the Landlord a notice to end tenancy on May 7, 2012, which was to be effective on June 1, 2012, according to the notice.

According to the testimony of the Agent for the Landlord, the Tenant was informed by the Agent, shortly after receiving the notice to end tenancy, that this was short notice and the Tenant would be responsible for June rent. The Agent testified that the Landlord put signs out and began advertising the rental unit shortly after receiving the Tenant's notice. The Agent testified that the Landlord had several rental units available, although this rental unit was re-rented for July 8, 2012.

The parties performed an outgoing condition inspection report on June 1, 2011. I note there was an incoming condition inspection report done as well.

The Tenant did not agree with the Landlord's request for rent for the month of June 2012, and refused to sign over her security deposit.

The Agent for the Landlord testified that the Landlord had to charge the Tenant for cleaning the drapes and the carpet, as the Tenant did not provide any receipt to them for cleaning these. The Agent alleges that the Tenant did not clean the carpets completely as there were still areas where she could see the Tenant's furniture had been and these had not been cleaned.

The Landlord is claiming \$770.00 in rent for June of 2012, a late fee of \$20.00, \$66.08 for carpet cleaning and \$60.00 for drapery cleaning, as well as the \$50.00 filing fee for the Application, for a total claim of **\$966.08**.

In reply, the Tenant alleges that at the outgoing condition inspection report the Agent for the Landlord did not mention the carpet or drapes required cleaning. The Tenant argued that the Agent said these were satisfactory at the time.

The Tenant testified that she told the Agent for the Landlord she had shampooed the carpets. The Tenant testified she borrowed a friends' carpet cleaner and did not have a receipt.

The Tenant testified she gave her notice when she did because she had been accepted into a different rental unit at a different complex and did not want to miss the opportunity. The Tenant felt it was more important to get into the new complex and did not want to miss the opportunity to move there. The Tenant testified she believed 24 days notice was enough.

The Tenant also disputes the **\$20.00** late rent fee the Landlord is claiming, as she believes no rent was due to the Landlord.

The Tenant claims for the return of the security deposit in the amount of **\$380.00**.

The Tenant also claims **\$250.00** for return of the parking fees she paid the Landlord for the 25 months of the tenancy. The Tenant testified she does not drive herself. The Tenant testified that she has poor eyesight and did not see the parking charge on the tenancy agreement. The Tenant testified that her friends and family only used the parking spot once or twice during the tenancy. The Tenant further testified that she spoke to the Agent for the Landlord about the parking fees as she thought it was a mistake that these were collected from her.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

### **Landlord's Claims**

I find the Tenant has breached the Act and the tenancy agreement by failing to give the Landlord the correct amount of notice time to end the tenancy.

Under section 45 of the Act and section 32 of the tenancy agreement the Tenant was required to give the Landlord a written notice to end tenancy at least one month before the effective end date of the tenancy, calculated from the day before rent is due. Here rent is due on the first day of the month.

Therefore, if the Tenant wanted to end the tenancy on May 31, 2012, the latest the Tenant could have given the Landlord a notice to end tenancy was April 30, 2012, the day before the May rent was due. Had the notice given by the Tenant on May 7, 2012, been effective on June 30, 2012, this would also have given the Landlord the correct

notice to end tenancy under the Act and tenancy agreement. In any event, the Tenant owed the Landlord for June 2012 rent given these facts.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the Tenant's breach of the Act and tenancy agreement caused the Landlord a loss of rent for one month. I find the Landlord has established a claim for rent for June of 2012, in the amount of **\$780.00**, including the late fee of **\$20.00**. I note that the regulation to the Act allows the Landlord to charge a late payment fee of up to \$25.00, as well as the tenancy agreement. Here the Landlord is claiming for \$20.00, and I allow that claim. I do not allow the Landlord the **\$10.00** parking fee for June of 2012, as it is clear the Tenant did not use the parking during June of 2012. I discuss the parking fee claim of the Tenant below.

As to the Landlord's claims for cleaning the carpets and window coverings, I find it was a term of the tenancy agreement that the Tenant was to have these cleaned at the end of the tenancy. Policy Guideline #1 to the Act, explains the responsibility of the Tenant here in detail, as follows:

### **CARPETS**

...

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. **Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.** Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

...

### **INTERNAL WINDOW COVERINGS**

...

3. **The tenant is expected to leave the internal window coverings clean when he or she vacates.** The tenant should check with the landlord before cleaning in case there are any special cleaning instructions. The tenant is not responsible for water stains due to inadequate windows.

...

[**Emphasis** added.]

Based on the above, I find the Tenant should have cleaned the carpets and drapes at the end of the tenancy. I find the Tenant had insufficient evidence to prove these were cleaned and I allow the Landlord **\$66.08** for carpet cleaning and **\$60.00** for drapery cleaning. As the Landlord has been successful in this claim, I also allow the **\$50.00** filing fee for the Application. I find the Landlord has established a total claim of **\$956.08**, subject to any offset below for the Tenant's claims.

### **Tenant's Claims**

I do not find the Tenant is entitled to return of the security deposit. The Landlord applied to keep the deposit within 15 days of the end of the tenancy and there is no evidence the Landlord extinguished any right to claim against the security deposit.

I find the Tenant had insufficient evidence to prove she did not use the parking stall for the majority of the tenancy. The Tenant had no evidence she wrote to the Landlord to request this charge be stopped, or that her friends and family did not use the parking stall. I find the Tenant knew or ought to have known she was paying for the benefit of having a parking stall, and she may not now claim for the return of these funds.

Therefore, I dismiss the Tenant's Application without leave to reapply.

Having found the Landlord has established a claim of **\$956.08**, I order the Landlord may retain the security deposit of **\$380.00** in partial satisfaction of the claim, and I grant the Landlord a monetary order for the balance due of **\$576.08**. This order must be served on the Tenant and may be filed and enforced through the Provincial Court.

### Conclusion

The Tenant's Application is dismissed.

The Landlord has established a monetary claim for unpaid rent, for a late payment fee, for cleaning carpets and drapes, and for the filing fee for the Application.

I order the Landlord may retain the security deposit in partial satisfaction of the claim, and grant the Landlord a monetary order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: August 14, 2012.

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Residential Tenancy Branch