



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MND, MNSD, FF

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for general cleaning, carpet cleaning and the cost of repairs and to keep the security deposit in partial satisfaction of the claim.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation under section 67 of the *Act* for cleaning and damage?

### **Background**

The landlord testified that the tenancy began in April 2010 and rent was \$825.00. A security deposit of \$412.50 was paid. The tenant testified that an additional \$200.00 was collected as a pet damage deposit in two \$100.00 installments, but the previous building manager declined to issue a receipt for these payments. The individuals who collected the pet damage deposit have since left the landlord's employ and were not present for the hearing.

The landlord acknowledged that the tenant had a pet in the suite, but testified that there is no record of payment for any pet damage deposit in the tenant's file.

The tenancy ended on August 31, 2012. A copy of the tenancy agreement was in evidence.

The landlord testified when the tenancy ended, the carpets and the premises were not left reasonably clean and the tenant failed to have the blinds professionally cleaned pursuant to a mandatory term in the in the tenancy agreement.

The landlord testified that they incurred costs of \$100.80 for the carpet cleaning and this charge is not being disputed by the tenant.

The landlord testified that additional general cleaning costs of \$66.00 were being claimed based on notations in the move-in and move-out condition inspection reports submitted into evidence.

The tenant's position is that the home was left in a clean condition and that no additional charges for cleaning are warranted. The tenant pointed out that she had indicated her disagreement with any charges for cleaning on the move-out condition inspection report.

The landlord is also claiming the cost of professional cleaning of the blinds in the amount of \$220.40, and made reference to a term in the tenancy agreement initialed by the tenant requiring the professional cleaning.

The tenant is disputing this charge on the basis that she had thoroughly cleaned the blinds herself and therefore they were not soiled at the time she vacated. The tenant pointed out that the move-out condition inspection report supports her stance, as there was no indication on the form that the window treatments were found to be dirty.

### **Analysis:**

With respect to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof was on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

I find that the landlord is relying on the content of the move-in and move out condition inspection reports to justify monetary compensation.

In order to be valid, I find that a landlord's completion of the move-in and move-out condition inspection report must comply with section 20(1) of the Residential Tenancy Regulation which states that a condition inspection report completed under section 23 or 35 of the Act must contain standard information including the following:

*(i) a statement identifying any damage or items in need of maintenance or repair;*

*(j) appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;*

*(k) the following statement, to be completed by the tenant:*

*I, .....*

*Tenant's name*

*[ ] agree that this report fairly represents the condition of the rental unit.*

*[ ] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:*

.....  
.....  
.....

*(l) a space for the signature of both the landlord and tenant.*

With respect to the move-in and move-out condition inspection reports submitted by this landlord, I find that the form utilized does not comply with 20(1)(j) and 20(1)(k) because it neglects to feature the two choices that are mandatory under this section of the Regulation. In light of the above deficiency, I find that there was inadequate opportunity for the tenant to express disagreement with the report.

In this instance the landlord had also included as part of the move-out condition inspection report, a sheet that was titled "*Summary of Charges*". This form showed a list of items where the estimated costs could be filled in. The form included a section at the bottom where the tenant could sign that she agreed with the above deductions from

the security deposit and another spot just beneath that where the tenant could sign that she agreed with deductions from the pet damage deposit. However, I find that there was no place for the tenant to sign that she disagreed with the charges. However, the tenant had written in her own notation indicating, "I disagree with these charges".

I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In regard to the claim for cleaning, I accept that the landlord incurred some costs for cleaning satisfying element 3 of the test for damages. However, to satisfy elements 1 and 2 of the test for damages, I find that the landlord is required to prove that the rental unit was not left in a *reasonably clean* state, which is the standard imposed by the Act.

I find that, even if I accept the notations shown on the move-out condition inspection report, I would still find that the deficiencies in the condition of the unit were relatively minor. I find that the premises were left reasonably clean. In any case, the tenant disagreed with the notations on the move-out condition inspection report.

In regard to the claim for the cost of professional cleaning of the blinds, I find that there was a clear term in the tenancy agreement requiring the tenant to have the blinds professionally cleaned at the end of the tenancy. I find that the tenant did not comply with this term. I therefore find that element 2 of the test for damages was satisfied as a violation of the agreement had clearly occurred.

However, I find that this violation did not give rise to payment of damages, because the blinds were apparently not left in a dirty condition by the tenant and I find that the landlord's move-out condition inspection report supports this conclusion.

With respect to the tenant's claim that she paid a pet damage deposit, of \$200.00 in two installments, I find that, on a balance of probabilities, the tenant did pay a pet damage deposit in this amount and that the previous superintendents likely failed to submit accurate records for the new property managers.

Given the above, I find that the landlord is entitled to the cost of carpet cleaning in the amount of \$100.80. I find that the landlord's claims for the cost of general cleaning and the cost of re-cleaning the blinds must be dismissed.

Accordingly I order that the landlord retain the \$100.80 from the \$612.50 being held for the tenant's security and pet damage deposits leaving \$511.70 still owed as a refund to the tenant.

I hereby grant a monetary order to the tenant in the amount of \$511.70. This order must be served on the landlord in accordance with the Act and, if necessary, can be enforced through Small Claims Court.

**Conclusion**

The landlord is partially successful in its claim and was ordered to retain part of the tenant's security deposit, the remainder of which must be refunded to the tenant forthwith.

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 28, 2012.

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Residential Tenancy Branch