



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for compensation for loss – Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started as a sublet on November 14, 2011 on a fixed term to February 29, 2012 and a second tenancy agreement was entered into for a term from March 1, 2012 to February 29, 2012. The Tenancy ended on May 31, 2012. Rent of \$1,400.00 was payable monthly and at the onset of the tenancy, the Landlord collected \$675.00 as a security deposit. The Parties conducted a move-in inspection on November 14, 2012. The Landlord states that no move-out inspection was completed no offer was made to conduct a move-out inspection and the Landlord states that there is no plausible explanation why an offer was not made.

The Tenant states that on May 30, 2012 she did try to call the Landlord to explain why the tenancy was ending but the Landlord refused to speak to the Tenant and hung up on the Tenant.

The Landlord states that the Tenant obtained a visitor's pass from the Strata and did not pay for it so the Strata charges the Landlord \$50.00 for this pass. The Landlord states that the Tenant was issued a single visitor's pass at the start of the tenancy. The Tenant states that no visitors pass was provided to the Tenant at the onset of the tenancy and that it is impossible for a tenant to order a visitors pass from the Strata as the Landlord needs to make the request. The Tenant states that a month or so after the start of the tenancy, the Landlord finally provided her with a visitor's pass. The Landlord states that no strata rules were provided to the Tenant at the onset of the tenancy and the Landlord did not provide a copy of the Strata rules in relation to the ordering of visitors' passes.

The Landlord states that the Tenant failed to clean the unit and claims \$240.00. The Landlord provided a copy of a document setting out cleaning at the unit, the name of a person and a note of cash paid June 1, 2012. This document was not signed or dated and the name on the document does not have an address or phone number. The Landlord provided photos of select portions of the unit. The Tenant states that at unit was cleaned at move-out.

The Landlord states that the door to the unit was damaged by the police during a domestic dispute and that the Tenant failed to repair the door sufficiently. The Landlord states that as door was in a common area the Strata instructed the Landlord to replace the door. The Landlord did not provide any evidence of this instruction or requirement by the Strata. The Landlord provided photos of the door. The Landlord also claims for the cost of a replacement lock and keys for the door. The Tenant states that the door was repaired and that the property manager told her after the completion of the repairs that the door was fine. Further the Tenant states that had the Landlord told her at the time that the repairs were insufficient, the Tenant would have made more repairs as the

contractor indicated that he would return if more was necessary. The Tenant states that the door was repaired to a better standard than before. The Tenant states that the keys to the unit were returned at the end of the tenancy.

The Landlord states that the Tenant failed to clean the carpet at move-out leaving the carpet stained and dirty. The Landlord states that cleaning the carpet failed to remove the stains and so the Landlord had to replace both the carpet and the underlay. The Tenant states that at move-in the carpet was stained and that the Landlord brought in professional cleaners however the stains did not come out and that further, the cleaners did not move the furniture during the cleaning leaving brown marks where the furniture sat. The Tenant states that there was not need to replace the underlay and that even if the carpet and underlay were damaged that the Landlord is claiming a cost equivalent to replacing a hardwood floor. The Tenant states further that the Landlord could have cut out and replaced portions of the carpet where the stains were located instead of replacing the whole carpet. The Tenant provided estimates of costs to replace the carpet indicating that the underlay came free with the purchase of the carpet.

The Landlord states that the Tenant left the walls of the unit with scratches, holes and a fixed area and claims \$675.00 for painting the unit. The Landlord states that the unit is painted every time a new tenant is obtained. The Tenant states that any damage to the walls of the unit was not caused by the Tenant and that the Tenant did not hang any pictures on the walls. The Tenant states that any marks on the walls caused by the Tenant were only reasonable wear and tear.

The Landlord states that the Tenant left stains on the tub causing the tub to require re-surfacing. The Landlord states that the tub was new in 2008. The Tenant states that no stains on the tube were caused by the Tenant and that the tub was neither clean nor new at move-in. The Tenant states that this was not pointed out in the move-in report as the Tenant thought the stains were normal wear and tear.

The Landlord states that the Tenant failed to give the Landlord notice to vacate and claims \$1,400.00 in lost rental income. The Landlord states that the unit was advertised on a web site a day or so after the Tenant left and that a new tenant was obtained for July 1, 2012. The Tenant states that the Landlord caused the Tenant stress by calling the Tenant at her work place and that this behavior was affecting the Tenants life so she had no choice but to leave.

### Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given the Tenant's evidence that the Tenant could not obtain a pass without the Landlord's permission and that the Landlord failed to provide the Tenant with such a pass until after a time, I find that the Landlord failed to show on a balance of probabilities that the Tenant obtained an extra pass without the Landlord's knowledge or consent and I dismiss this claim.

Considering the photos of the unit which do not indicate an unclean unit, the Tenant's evidence that the unit was cleaned at move-out, and the lack of a sufficiently identified receipt, I find that the Landlord has failed to sufficiently show that the Tenant did not clean the unit to a reasonable state or that the Landlord incurred costs to clean the unit. I therefore dismiss this claim.

Given the photos that indicate no damage to the door other than some areas that may require paint touch-ups, considering the Tenant's evidence that the manager approved the repairs, and given that no evidence was provided that the Strata required the doors replacement, I find that the Landlord has failed on a balance of probabilities that the Tenant caused damages to the door requiring its replacement. I therefore dismiss this claim and the claim for the replacement lock and keys

Given the lack of a move out inspection, considering the Tenant's undisputed evidence that the Landlord's carpet cleaners failed to remove stains from the carpet at the onset of the tenancy and noting that the photos of the carpet include stains that appear to have been left from furniture legs, I find that the Landlord has failed to establish that the Tenant caused the carpet to be damaged. I therefore dismiss this claim.

Given that the photos provided by the Landlord do not show any damages to any walls of the unit other than a couple of small areas that were patched on one wall and considering the Landlord's evidence that the unit is painted for each tenancy, I find that the Landlord has failed to substantiate that the painting of the unit was required due to an act or negligence of the Tenant. I therefore dismiss this claim.

Given the photos of the stains on the bathtub, I find that the Landlord has substantiated that the Tenant damaged the tub and that the Landlord is therefore entitled to compensation of **\$375.00** for the cost of resurfacing the tub.

Based on the undisputed evidence that the Tenant failed to provide a month's notice to end the tenancy and accepting that the Landlord acted reasonably to mitigate its losses, I find that the Landlord has substantiated its claim for lost rental income in the amount of **\$1,400.00**.

As the Landlord has only been partially successful with its claim, I find that the Landlord is entitled to recover half of the \$50.00 filing fee in the amount of **\$25.00** for a total

entitlement of **\$1,800.00**. Setting the security deposit of \$675.00 plus zero interest off the entitlement leaves **\$1,125.00** owing by the Tenant to the Landlord.

Conclusion

**I order** that the Landlord retain the **deposit** and interest of \$675.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,125.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 19, 2012.

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Residential Tenancy Branch