



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      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. An Order to retain all or part of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord 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 retain all or part of the security deposit?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on March 1, 2012 with monthly rent of \$875.00 due on the first of each month. At the outset of the tenancy the Landlord collected \$437.50 as a security deposit and \$162.50 as a pet deposit. The Parties mutually conducted a move-in inspection on February 28, 2012. The tenancy ended on August 31, 2012 however the Tenants did not complete the move out and cleaning until September 2, 2012 and returned the keys on September 3, 2012, the date arranged for the move-out inspection.

The Landlord states that the Tenants were supposed to move out on August 31, 2012 but moved out of the unit late and left the unit unclean and with damages. The Tenant states that the Landlord was told that they could not get a moving truck for August 31 and agreed that they could move out the next day. The Landlord states that she was

not happy that they were late moving out but did not know what else could be done. The Landlord states that no tenancy had been arranged to start on September 1, 2012.

The Landlord states that she started showing the unit in August but that due to the smell of cat in the unit, she was unable to attract new tenants other than one person who had called indicating that they were looking desperately for a unit for September 1, 2012. The Landlord states that as the Tenants were not moved out for that date, the Landlord had to call the prospective tenant that the unit would not be ready until sometime later. The Landlord claims a half months rent due to the work that needed to be done to clean and repair the unit before it could be rented.

The Landlord submitted a letter from a neighbour indicating a strong smell of cat in the unit when the neighbour visited the unit on September 6, 2012. It is also noted that the Landlord's receipt for the carpet cleaning indicates urine spots and a strong pet odor. The Landlord states that she had the carpets cleaned further on September 12, 2012 at a cost of \$110.88 and entered into another tenancy for October 1, 2012. The Landlord states that the cleaning of the carpets was delayed due to the other cleaning that the Landlord wanted completed first.

The Landlord states that the Tenant's cats damaged two screens that required repair, the floors required washing due to cat feces that was left on the laminate floor and that the bathroom was dirty. The Landlord claims the costs of cleaning the unit and repairing the screens in the amount of \$75.00 plus materials for the screens at a cost of \$14.78 and a cleaning product for the laminate floors in the amount of \$4.02. The Landlord states that a sink stopper was missing and the Landlord replaced this at a cost of \$8.95. The Landlord provided photos of the unit and it is noted that the photos are only of the carpet and one area of the laminate flooring.

The Tenants deny that the unit was left unclean and state that the carpets were steam cleaned twice and that they cleaned the unit for 5 hours, including washing of the floors. The Tenant states that the unit smelled of marihuana at move-in and that the only smell

in the unit at move-out was the same marihuana smell caused from the previous tenant. The Tenant denies that any screens were damaged and states that there was no damage when they moved out of the unit and have no idea how the screens became damaged. The Tenant states that there was no missing sink stopper.

The Landlord states that on September 3, 2012, the date of the move-out inspection, the Parties did not go through the whole unit for the move-out inspection as the carpets were wet from the Tenant's cleaning. The Landlord states that the form was completed and the Tenants were asked to review the form and to sign it. The Tenant states that the inspection was scheduled for 6:00 p.m. and the Tenants arrived at 5:30 pm to discover that the Landlord had already inspected the unit and filled out the form without the Tenants being present so the Tenants refused to sign the form. The Tenant states that the carpets were not wet at the time of the move-out inspection. The Tenant states that the evidence of the Landlord's neighbour is not a reliable witness as the Landlord and the neighbour are good friends.

### Analysis

Section 38(4) of the Act provides that a landlord may retain an amount from a security deposit or a pet damage deposit if after the end of the tenancy, the director orders that the landlord may retain the amount. 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 on a balance of probabilities that, inter alia, the damage or loss claimed was caused by the actions or neglect of the responding party, that costs for the damage or loss have been incurred or established and that steps were taken by the claiming party to minimize or mitigate the costs claimed.

Although the Tenant denies any odor in the carpet, given the Landlord's evidence from the carpet cleaning company indicating a strong odor and stains, I find on a balance of probabilities that the carpets were not cleaned to a reasonable state due to the cat odors and that the Landlord has substantiated a monetary amount of **\$110.88** for this cleaning cost. Given that the Landlord did not provide photos that indicate an unclean

unit other than one small spot on the floor, and no distinction was made as to the allocation of costs within this amount for labour to repair the screens, I find that the Landlord has not substantiated the cleaning costs claimed for cleaning the unit and I dismiss this claim. Given the photos of the screen, I find that the screens were damaged during the tenancy and that the Landlord has substantiated the cost for supplies in the amount of **\$14.78**. Although the Tenant denies that a sink stopper was missing, I prefer the Landlord's more persuasive evidence that this item was missing and find therefore that the Landlord is entitled to the claimed amount of **\$8.95**.

When a tenancy ends no rent is payable. If however, the tenant remains in possession of the premises, the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. Further, in order to claim an additional amount as lost rental income, the landlord must show that the tenant caused the loss. Based on the Tenant's evidence that the unit was not cleaned until September 2, 2012 and the keys were not returned until September 3, 2012, but considering the Parties evidence that the Landlord did accept that the Tenants would not be out of the unit until September 1, 2012. I find that the Landlord has substantiated an entitlement to two days of occupation rent in the amount of **\$58.32**. This amount is based on the per diem rate of \$29.18.

Although the Landlord claims a greater amount as lost rental income due to the state of the unit left by the Tenants, as I found that the Landlord did not substantiate an unclean unit and as the Landlord did not re-clean the carpets until approximately two weeks after gaining possession of the unit, I find that the Landlord failed to mitigate any losses that may have been related to the carpet smell and I therefore dismiss the Landlord's claim for a further monetary entitlement in relation to lost rental income. As the Landlord has been partially successful with the application, I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$242.93**. I order the Landlord to retain this amount from the security and pet deposit of **\$600.00** plus zero interest and to return the remaining amount of **\$357.07** to the Tenants forthwith.

Conclusion

I **order** that the Landlord retain **\$242.93** from the **deposit** and interest of \$600.00 in full satisfaction of the claim.

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$357.07**. 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 Act.

Dated: December 6, 2012.

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Arbitrator  
Residential Tenancy Branch