



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Strata's Choice Property Management Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MND, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession for cause; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant was done in accordance with section 89 of the *Act*, sent via registered mail on November 30, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep the security deposit?

Background and Evidence

The landlord's agent testifies that this tenancy started on August 01, 2011 for a fixed term. The tenancy reverted to a month to month tenancy at the end of the fixed term. Rent for this unit was \$750.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$375.00 on July 19, 2011. Both parties attended the move in and move out condition inspection and the tenant has signed the report to agree that the report fairly represents the condition of the rental unit at the end of the tenancy. The tenant gave the landlord a forwarding address on September 30, 2012 on the inspection report.

The landlord had made application previously for damage to the rental unit and was given leave to reapply for that portion of their claim. The landlord has provided a copy of the tenancy agreement, the condition inspection reports signed by the parties, photographic evidence of the damage and invoices for the amounts claimed.

The landlord's agent testifies that the tenant left the rental unit damaged and unclean. The landlord seeks to recover the cost for the following damage:

- Two replacement doors were required; one for the bathroom and one for a bedroom. Both doors were damaged beyond repair with one door having the bottom panel kicked out.
- A door jamb was also damaged.
- The lock set for one of the doors had to be removed and refitted.
- The new doors had to be installed and painted.
- The fireplace mantel was burnt
- The glides for a closet door were missing and had to be replaced
- There was dents and scratches on most of the walls throughout the unit which required filling, sanding and painting
- The carpet was left in a filthy condition with many burn holes. The carpet and underlay had to be removed and new carpet and underlay fitted. The carpet was only a year old
- The baseboards had to be touched up due to the condition the tenant left them in and because of the carpet replacement
- Construction debris had to be removed from the unit such as the carpets, damaged doors, paint pots

The landlord seeks to recover the sum of \$7,025.20 for this work and has provided the invoice detailing the work in evidence.

The landlord's agent testifies that the tenant had failed to clean the unit and had left food in the fridge and cupboards which had to be removed. The unit was left extremely dirty and the landlord incurred a cost of \$77.00 to clean the unit. The invoice from the cleaners has been provided in evidence. The tenant has signed the move out condition inspection report agreeing to the condition of the rental unit at the start and end of the tenancy.

The landlord seeks to recover the \$100.00 filing fee from the tenants and seeks an Order to keep the tenants security deposit of \$375.00.

## Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find from the evidence provided that the landlord has established a claim for damages and cleaning. The landlord has provided a copy of the inspection reports showing the condition of the rental unit at the start and end of the tenancy. The report clearly details the damages and dirty condition of the rental unit and the tenant has signed the report to agree to the findings on the report. The landlord has also provided additional evidence in the form of invoices for the work carried out and the photographic evidence which corroborates the landlords claim for \$7,025.20 for damages and \$77.00 for cleaning.

With regard to the landlords claim to keep the security deposit; I direct the landlord to section 38(1) of the Act which says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlords did receive the tenants forwarding address in writing on September 30, 2012. As a result, the landlords had until October 15, 2012 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlords did not return the security deposit and did not file an application for Dispute Resolution to keep the deposit within the 15 days. I have considered the inspection report and find it states on page two of the report that the tenant agrees that any cleaning or damages will be charged against the security deposit. A landlord is not entitled ask the tenant at the start of a tenancy to agree to this term as it is in contravention of s. 38 of the *Act*. A landlord can only ask a tenant to agree to deductions from a security deposit at the end of the tenancy, the tenant must agree in writing and an amount must be agreed upon and documented.

I therefore find has the landlord has not filed a claim to keep the security deposit within 15 days and the time limit in which to apply is now past. Therefore, even though the tenant has not applied for double the security deposit, I am required to order that the landlord must pay double the amount of the security deposit to the tenant to the amount of \$750.00. This amount will be deducted from the landlord's monetary award as follows:

Damages	\$7,025.20
Cleaning	\$77.00
Filing fee	\$100.00

Subtotal	\$7,202.20
Less double the security deposit	(-\$750.00)
Amount due to the landlord	\$6,452.20

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$6,452.20. The order must be served on the respondent and is enforceable through the Provincial Court 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: March 04, 2013

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Residential Tenancy Branch

