



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

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

## **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for repairs and cleaning and to justify keeping the security deposit in partial satisfaction of the claim. The application was also to deal with the tenant's claim for the return of double the security deposit not refunded by the landlord within 15 days after receiving the forwarding address.

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 testimony and relevant evidence that was properly served.

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

Is the landlord is entitled to monetary compensation under section 67 of the *Act* for damages?

Is the tenant entitled to a refund or credit for double the security deposit?

## **Background**

The tenancy began on April 15, 2011 and current rent was \$900.00, plus \$20.00 for parking. A security deposit of \$450.00 and \$50.00 deposit for the key was paid at the start of the tenancy.

A move-in condition inspection report was completed and was in evidence. The tenancy ended on September 15, 2012 and a move-out condition inspection report was also completed at that time and signed by both parties. No rental arrears were outstanding. However, according to the landlord, the unit was left in a state that required cleaning and repair. The landlord testified that the tenant left unpaid utilities.

The landlord testified that, after the move-out condition inspection was done and the tenant supplied her forwarding address, the landlord had assumed that the tenant's signature on the report, also functioned to indicate her agreement with the estimated charges for the cleaning and repairs that were listed on the documents by the landlord.

As these costs exceeded the amount of the tenant's security deposit, the landlord stated that they believed that the refund of the security deposit was no longer at issue and thus the landlord did not immediately make an application seeking an order to retain the security deposit to cover their expenses. The landlord testified that they recently received the tenant's application seeking a monetary order for double the security deposit, they then had to make this cross application to claim their costs. The landlord's application was made online on January 2, 2013 claiming the following:

- \$129.42 for unpaid hydro costs
- \$90.00 for carpet cleaning
- \$375.08 to clean and repair the blinds
- \$80.00 to repair the patio door screen
- \$75.00 for the cost of cleaning

A copy of the tenancy agreement, copies of the move-in and move-out condition inspection reports, copies of communications, proof of service and copies of invoices were submitted into evidence.

The landlord testified that they had to pay the hydro arrears left by the tenant to avoid a hydro bill-back to the landlord, which is a local policy of the municipality.

With respect to the carpet-cleaning, the landlord testified that this is a normal end-of-tenancy requirement outlined in the tenancy agreement.

The landlord testified that the repairs to the blinds and door screen were necessary because these suffered damage by the tenant.

In regard to the cost of cleaning the rental unit, the landlord testified that the move-out condition inspection report confirmed that the stove was not clean and that extra cleaning was required in the bathroom to bring these areas up to a reasonable standard.

According to the tenant, when she signed the move-out condition inspection report, agreeing with the inspection results, she did not intend that her signature would be seen as endorsing all of the charges listed by the landlord, as well.

The tenant testified that she had intended to pay the hydro bill after vacating, but discovered that the landlord had already sent the payment to the utility company.

The tenant argued that they had recently shampooed the carpets a couple of months before vacating. The tenant admitted that they did not let the landlord know that this had occurred.

The tenant also acknowledged that repairs to the blinds and the screen may have been necessary but felt that the costs were exorbitant.

However, the tenant disputed the cleaning charges and pointed out that the rental unit was left in a reasonably clean state as required under the Act. The tenant stated that she did thoroughly clean the stove, but was not able to restore it to a pristine state because of normal wear and tear. The tenant also felt that the bathroom was left sufficiently clean.

In regard to the return of her security deposit, the tenant testified that she had given the landlord her written forwarding address in September 2012, but had never received a refund. The tenant is claiming an amount equivalent to double the security deposit.

### **Analysis: Landlord's Monetary Claim**

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.

In regard to cleaning and repairs, 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. (my emphasis).

Sections 23(3) and 35 of the Act, dealing with move-in and move-out inspections, state that the landlord must complete a condition inspection report in accordance with the regulations and I find that, in this instance, the landlord complied with the Act and both a move-in and move-out condition inspection report were properly completed and signed. However, I find that the landlord's assumption that the tenant had given her written consent for the security deposit to be forfeited, was not correct. I find that the to qualify as "written permission" to keep the deposit, the tenant would need to specifically identify the monetary amount that she was consenting could be retained by the landlord.

Based on the evidence and the testimony, I find that the landlord is entitled to monetary compensation of \$129.42 for the hydro cost, \$90.00 for carpet cleaning, \$375.08 to clean and repair the blinds and \$80.00 to repair the patio door screen.

With respect to the \$75.00 claim for the cleaning, I accept the tenant's testimony that she did leave the rental unit in a reasonably clean condition, based on the move-out condition inspection report notations.

Given the above, I find that the landlord is entitled to total monetary compensation of \$674.50.

### **Analysis: Tenant's Claim for Security Deposit**

With respect to the return of the security deposit and pet damage deposit, I find that section 38 of the Act requires that, within 15 days after the tenancy ends and the landlord receives the tenant's forwarding address in writing, the landlord must either: a) repay the security deposit or pet damage deposit to the tenant with interest or; b) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act provides that the landlord can only retain a deposit if, at the end of the tenancy, the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, the landlord has obtained an order through dispute resolution permitting the landlord to retain the deposit to satisfy a monetary claim against the tenant.

I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days after the forwarding address has been given, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the deposit.

I find that the tenant's security deposit was \$500.00 and that the landlord failed to follow the Act by wrongfully retaining the funds being held in trust for the tenant. I find that the tenant is therefore entitled to compensation of double the deposit, amounting to \$1,000.00.

Based on the above, I find that the landlord is entitled to \$674.50 for damages and the tenant is credited with \$1,000.00, representing double the deposit retained by the landlord. In setting off the two monetary awards, I hereby issue a monetary order in favour of the tenant for \$325.50. This order must be served on the landlord in accordance with the Act and if necessary can be enforced through Small Claims Court.

The remainder of the landlord's application is dismissed without leave. Each party is responsible for their own application costs.

### **Conclusion**

Both parties are partially successful and the landlord is granted entitlement to retain a portion of the tenant's security deposit, with a monetary order issued to the tenant to refund the remainder.

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 13, 2013

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Residential Tenancy Branch