



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Kendall Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the landlord – MND, MNSD, FF

For the tenant – MNDC, MNSD

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord has applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for the return of the security deposit; and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement. At the outset of the hearing the tenant withdrew her application for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement.

The tenant and landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. Both Parties confirmed receipt of evidence and confirmed that they had opportunity to review it. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to keep all or part of the security deposit?
- Is the tenant entitled to recover all or part of the security deposit?

Background and Evidence

The parties agree that this tenancy started in October 2010. Rent for this unit was \$1,375.00 per month due on the 1<sup>st</sup> of each month in advance. This was a fully furnished unit. The tenant paid a security deposit of \$700.00 on September 03, 2010. Both parties attended a move in and a move out condition inspection of the property.

The landlord testifies that the tenant failed to leave the rental unit in a clean condition at the end of the tenancy. The tenant had requested more time to clean the unit and the carpets and the landlord agreed the tenant could have a few more days as the unit had not been re-rented. The landlord testifies that the tenancy should have ended on October 31, 2012 and the landlord arrived at the unit on November 02, 2012 to complete the move out inspection but found the tenant was still moving out her personal belongings and there was still cleaning to be done including the carpets. The carpets were not cleaned until November 05, 2012.

The landlord testifies that they returned to the unit again on November 05, 2012 and found that the carpets had been cleaned but the unit had still not been cleaned to a reasonable standard. The fridge was on wheels and had not been pulled out to clean behind it and when questioned the tenant said "you expect me to move that". The landlord testifies there was dirt behind the fridge, the dishwasher was left dirty, the pots and utensils were left very sticky, the stove top was left very dirty; there were cobwebs and dust everywhere showing that the tenant had not cleaned, The fireplace mesh

guard had food splatters ingrained on it; the bathroom smelt of urine; the extractor fan and air inlet cover were extremely dusty, the barbeque appeared as if it had never been cleaned with thick grease left on the grills; and the patio was left very dirty with tramped in mud and childrens chalk drawings. The landlord testifies that the unit overall was left in a disgusting condition.

The landlord testifies that as they only took over as property managers in July, 2012 the previous property management company had not provided a copy of the move in condition inspection report. Therefore the landlord testifies that although there was some minor damage found in the unit they did not apply for a monetary award for this as they could not show that the tenant was responsible for any damage without a copy of the move in inspection report. The landlord testifies that as this unit is part of the resort and was rented out to this tenant under a tenancy agreement, the unit would have been in pristine condition regarding the cleanliness of the unit at the start of the tenancy.

The landlord testifies that it took considerable time to clean the unit and this work was done by the housekeeping supervisor for the resort. The housekeeper has provided a detailed list of the cleaning carried out in the unit and the hours worked. The list shows the cleaner spent nine hours cleaning at \$35.00 per hour and an amount of 10 percent for the cleaning supplies has been added to this sum. This list has been provided in the landlords documentary evidence along with photographic evidence of the condition of the unit. The landlord seeks to keep a portion of the tenants security deposit of \$346.50 for the cleaning carried out and the cleaning supplies used.

The landlord testifies that the tenant sent a forwarding address to the owner of the rental unit rather than the landlord at the property management company. This address was provided by e-mail on November 26, 2012 and was forwarded by the owner to the property management company on November 27, 2012.

The tenant testifies that when the tenancy started the rental unit was not clean as it had been sitting empty for some time and the tenant testifies that she had to clean the unit.

The tenant testifies that at the end of the tenancy the tenant and the tenant's parents cleaned the unit and the tenant testifies that the unit was regularly cleaned during the tenancy. The tenant agrees that they forgot to clean the Barbeque and agrees that they did not pull out the fridge to clean behind that. The tenant disputes the reminder of the landlords claim and testifies that the pots and pans and utensils were not used by the tenant as they were sticky at the start of the tenancy. The tenant disputes the landlord's photographic evidence and testifies that the unit was not left in this condition at the end of the tenancy.

The tenant testifies that the forwarding address was sent to the owner of the rental unit as this was the person the tenant dealt with during the tenancy. The tenant testifies that a forwarding address was first sent by e-mail on November 08, 2012 however the tenant has not provided a copy of this in evidence. The tenant agrees the forwarding address was sent again on November 26, 2012. The tenant seeks to recover the security deposit of \$700.00.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the date the tenant gave the owner of the rental unit her forwarding address in writing. The tenant has stated that she gave the owner her forwarding address on November 08, 2012 however the tenant has provided no documentary evidence to support this and the parties do agree that the tenant sent a forwarding address on November 26, 2012. The date the tenant sent her forwarding address is significant because the landlord only has 15 days from the date the forwarding address is received to either return the security deposit or file an application to keep it. If the landlord does not comply then the tenant would be entitled to recover double the security deposit. The tenant has provided no corroborating evidence to proof that her forwarding address was given to the owner or the property management company on November 08, 2012 therefore I must find that the owner of the rental unit

received the tenants forwarding address on November 26, 2012 and therefore the landlord did apply to keep all or part of the security deposit within 15 days.

With regard to the landlords claim for cleaning the rental unit; I refer the parties to s. 32(2) of the *Act* which states:

*A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

From the evidence presented I find it is highly likely that the tenant failed to leave the rental unit in a reasonably clean condition at the end of the tenancy. The tenant argues that the unit was left clean, yet the landlord's photographic evidence clearly shows all the cleaning that was required in the unit which implies that the unit was not left reasonably clean at the end of the tenancy. Therefore I find the landlord has established a claim for cleaning the rental unit to the amount of **\$346.50** and the landlord is therefore entitled to keep this sum from the tenants security deposit pursuant to s. 38(4)(b) of the Act.

The landlord is also entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the Act.

No further Monetary Orders have been applied for by the landlord for damages.

The tenant is entitled to recover the balance of the security deposit to the sum of **\$303.50** and a Monetary Order has been issued to the tenant for that amount.

### Conclusion

I HEREBY FIND in favor of the landlords claim to keep part of the tenant's security deposit. I ORDER the landlord to keep **\$396.50** from the security deposit.

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$303.50**. The order must be served on the landlord 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 14, 2013

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Residential Tenancy Branch

