



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – MNSD, FF

For the landlord – MND, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord 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 tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order for double the security deposit less the amount already returned; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord 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. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for double the security deposit less the amount returned by the landlord?

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

### Background and Evidence

The parties agree that this tenancy started on February 01, 2012. This started as a fixed term tenancy but did not have the option for the tenancy to end at the end of the fixed term. Rent for this unit was \$1,000.00 per month due on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$500.00 on December 29, 2011. The parties also agree that the landlord did a walkthrough of the unit with the tenant at the start and end of the tenancy but no inspection report was completed as required under the *Act*.

### **The tenant's application**

The tenant testifies that she gave the landlord notice to end the tenancy and vacated the unit on January 31, 2013. The tenant testifies that she gave the landlord her forwarding address on this date. The tenant testifies that the landlord sent the tenant a cheque dated February 04, 2013 for \$358.00. The tenant testifies that she did not give the landlord her consent to make any deductions from the security deposit and therefore the tenant seeks to recover double the security deposit to the sum of \$1,000.00 less the amount already returned.

The landlord disputes the tenants claim. The landlord testifies that the amount of \$142.00 was retained from the tenant's security deposit for carpet repair and cleaning.

### **The landlord's application**

The landlord testifies that the tenant failed to give proper notice to end the tenancy. The tenant sent the landlord a text message which was received on January 07, 2013 informing the landlord that the tenant will vacate the rental unit at the end of January.

The landlord testifies that she started to advertise the unit for rent on two internet sites for February at a monthly rent of \$1,200.00 and posted a notice in the window of the unit. The landlord testifies that the unit was not re-rented until March 01, 2013. The landlord therefore seeks to recover a loss of rental income of \$1,200.00 from the tenant for February's rent.

The landlord testifies that during the walk through of the unit the landlord noticed a bleach mark on the stair carpet. This was approximately two or three inches by two inches in size. The landlord testifies that the tenant admitted to causing this mark and this section of the stair carpet had to be replaced at a cost of \$110.00 which the landlord seeks to recover from the tenant.

The landlord testifies that the landlord had steam cleaned the carpets herself prior to the tenant moving in. The tenant had a dog and failed to clean the carpets at the end of the tenancy. The landlord testifies that she had the carpets professionally cleaned on January 26, 2013 and seeks to recover the cost for this work from the tenant to the sum of \$352.79.

The landlord testifies that the tenant damaged a screen door and failed to leave the screen tracking clean. The landlord replaced the screen door at a cost of \$90.00 and had the tracking cleaned at a cost of \$30.00. The landlord seeks to recover the sum of \$134.40 for this work which includes HST.

The landlord testifies that the tenant failed to leave the fridge interior and exterior clean. The landlord testifies that the fridge is on wheels and could have been moved to clean the exterior by the tenant. The landlord seeks to recover the cleaning costs for the fridge to a sum of \$40.00.

The tenant disputes the landlord's claim for a loss of rental income for February. The tenant testifies that she sent the landlord a text message on December 31, 2012 to end the tenancy. The tenant testifies that notice was given because the landlord wanted to

increase the rent to \$1,200.00 because the tenant's boyfriend and two children had moved into the unit with the tenant. The tenant testifies that she followed that text message up with another message on January 07, 2013 to which the landlord responded thanking the tenant for following it up and asking if the tenant will be out on January 31, 2013.

The tenant disputes the landlords claim for damage and cleaning. The tenant testifies that the stair carpet had a small circle of bleach on it about one inch in diameter. This was caused after the tenant placed a shopping bag with bleach in it on the stairs and the bottle leaked. The tenant testifies that this should be classed as normal wear and tear.

The tenant testifies that as the landlord had not professional cleaned the carpets at the start of the tenancy and the carpets were covered in spots, the tenant should not be held responsible to have the carpets professional cleaned at the end of the tenancy. The tenant testifies that she had removed her belongings by January 26, 2013 and the landlord had a carpet cleaner arranged for that day. The tenant testifies that in doing so the landlord did not give the tenant opportunity to clean the carpets even though the tenant still had possession of the unit until January 31, 2013 and the landlord had cleaned the carpets before the walk through inspection was conducted together.

The tenant testifies that the screen door is a phantom type screen which pulls out from the side. The tenant testifies that the screen was already damaged with a tear when the tenant moved into the unit. The tenant testifies that the screen door does not have metal tracking around it.

The tenant testifies that she cleaned the unit for two days which included cleaning the interior of the fridge. The tenant testifies that the exterior of the fridge was dirty when the tenant moved into the unit.

The tenant asks the landlord when the landlord took the photographs provided in the landlord's evidence as they must have been taken prior to the tenant moving out as they show the tenants belongings in the unit. The landlord responds and states that they were taken when the landlord had given the tenant notice to enter the unit to show the unit to a prospective tenant prior to the tenant moving out.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim to recover double the security deposit; Section 38(1) of the *Act* 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 landlord did receive the tenants forwarding address in writing on January 31, 2013. As a result, the landlord had until February 15, 2013 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return all of the security deposit and did not file an application for Dispute Resolution to keep the deposit until May 03, 2013. Therefore, I find that the tenant has established a claim for the return of double the security deposit of \$1,000.00 less the amount already returned by the landlord of \$358.00 pursuant to section 38(6)(b) of the *Act*.

With regard to the landlords claim for \$1,200.00 for loss of rent for February due to improper notice by the tenant; a tenant is required under s. 45 of the *Act* to provide the landlord with written notice to end a tenancy; this Notice must be received by the landlord on the day before the day in the month that rent is due. As the parties agree

that rent was due on the first day of the month then the tenants notice should have been received in writing on December 31, 2012 in order to be effective on January 31, 2013. However In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale. In this case the landlord attempted to re-rent the unit for a rent of \$1,200.00. If the tenancy had continued at that time the most the landlord would have been able to increase the rent would have been by 3.8 percent to an amount of \$38.00. Therefore I find the landlord did not mitigate the loss by attempting to re-rent the unit at the same or slightly higher rent and instead greatly increased the rent. Therefore this section of the landlords claim is denied.

With regard to the landlords claim for replacement carpet; I refer the parties to s. 32(3) of the *Act* which says that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. In this matter the tenant has agreed that the bleach was caused by the actions of the tenant. The tenant argues that this is normal wear and tear; however, it is my decision that with some due care and attention this stain could have been avoided and consequently I uphold the landlords claim to recover the cost to repair this section of the stair carpet and award the landlord the sum of \$110.00.

With regard to the landlords claim for carpet cleaning; I refer the parties to the Residential Tenancy Policy Guidelines #1 which deals in part with the landlords and tenants obligation to clean the carpets. This says that at the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair. The tenant argues that the carpets had spots all over at the start of the tenancy and that although the tenant had a dog the landlord cannot hold the tenant responsible to have the carpets professional cleaned at the end of the tenancy. I find that the burden of proof falls to the landlord in this matter to show that the carpets were clean at the start of the tenancy and although the landlord has failed to do a move in condition

inspection report to corroborate the landlords claim I find from the landlords photographic evidence provided in evidence that the carpets do appear as if they have been cleaned prior to the start of the tenancy. However, I find that the tenant still had possession of the rental unit between January 26 and January 31, 2013 and the landlord arranged to have the carpets cleaned on January 26, 2013 therefore not allowing the tenant the opportunity in the last few days to have the carpets cleaned. Consequently I deny the landlords claim for carpet cleaning.

With regards to the landlords claim for a replacement screen and cleaning of the screen tracks; the tenant argues that the screen was already damaged at the start of the tenancy and the screen did not have tracks. In this matter the burden of proof falls to the landlord to show that the tenant was responsible for the damage to the screen and that the tracks were dirty. The landlord would need to provide corroborating evidence such as a move in and move out inspection report to meet this burden of proof. As no corroborating evidence has been provided it is one person's word against that of the other that the screens were damaged during the tenancy and therefore the burden of proof is not met. Consequently I deny the landlords claim for a replacement screen and cleaning of the tracks.

With regard to the landlords claim for cleaning the fridge; the tenant argues that she did clean the interior of the fridge but has testified that the exterior of the fridge was not clean at the start of the tenancy. Again the burden of proof falls to the landlord and without the corroborating evidence afforded by an inspection report and as there are no photographs clearly showing the interior of the fridge then the burden of proof is not met. Therefore this section of the landlords claim is also denied.

As the tenant has been largely successful with her claim I find the tenant is entitled to recover the \$50.00 filing fee from the landlord pursuant to s. 72(1) of the *Act*. As the landlord has only been partially successful with their claim I find the landlord must bear the cost of filing their own application. A Monetary Order has been issued to the tenant for the following amount:

Double the security deposit	\$1,000.00
Less amount already returned	(-\$358.00)
Less amount awarded to the landlord	(-\$110.00)
Plus filing fee for the tenant	\$50.00
Total amount due to the tenant	\$582.00

### Conclusion

I HEREBY FIND largely in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$582.00**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to a monetary award of **\$110.00**. This sum has been offset against the tenant's monetary award.

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: May 31, 2013

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Residential Tenancy Branch