



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNSD MNDC FF

### Introduction

This hearing dealt with applications by the landlord and the tenant. The landlord applied for monetary compensation and an order to retain the security deposit in compensation of the claim. The tenant applied for recovery of the security deposit and further monetary compensation. The landlord and the tenant participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?  
Is the tenant entitled to monetary compensation as claimed?

### Background and Evidence

#### *Undisputed Facts*

The tenancy began on June 1, 2012 as a fixed-term tenancy to end on July 31, 2013, with monthly rent of \$775 payable in advance on the first day of each month. The tenancy agreement contains a clause indicating that if the tenant ends the tenancy before the end of the fixed term, she will be required to pay a liquidated damages amount of \$215. At the outset of the tenancy, the tenant paid the landlord a security deposit of \$387.50. The landlord and the tenant carried out a joint move-in inspection and completed a condition inspection report on May 31, 2012.

In November 2012 some flooding caused damage to the rental unit, and repairs were required. On December 10, 2012 the tenant gave the landlord notice that she intended to vacate the rental unit as of January 31, 2013 and she provided her written forwarding address. The landlord and the tenant carried out a joint move-out inspection and completed a condition inspection report on January 26, 2013. The tenancy ended on January 31, 2013.

On February 5, 2013 the landlord applied for monetary compensation of \$362.88 and an order to retain that amount of the security deposit in full compensation of her claim. On March 25, 2013 the tenant received from the landlord a cheque dated March 23, 2013 for the amount of \$24.62. The tenant returned the cheque to the landlord.

#### *Landlord's Claim*

The landlord claimed the following amounts:

- 1) \$192.88 for liquidated damages – the landlord reduced the liquidated damages amount from \$215 to her actual costs of re-renting, including \$180 for 9 hours of the landlord's time to conduct interviews and fill out the rental application for a new tenant, and \$12.88 to conduct a credit check on the new tenant;
- 2) \$80 for carpet cleaning; and
- 3) \$40 for paint – the tenant had chipped some paint off the bathroom wall, and the landlord had to buy a gallon of new paint to match the old paint. The landlord stated that the age of the paint in the bathroom was maybe a couple of years, and she acknowledged that not all of the gallon of paint was needed to touch up the damage in the bathroom.

The tenant acknowledged the amount claimed by the landlord for carpet cleaning. The tenant did not think the amount claimed for paint was reasonable, as the chipped area was thumbnail-sized. The tenant also could not see why the landlord was charging \$20 per hour for her time to attempt to re-rent the unit.

#### *Tenant's Claim*

The tenant claimed the following amounts:

- 1) \$387 for not being able to stay in the suite for 15 days, plus \$105 for the cost of commuting from her parents' house while she could not stay in the rental unit – the tenant stated that from one day near the beginning of the tenancy she could not stay in the unit because of a burst water pipe, and for 14 days beginning in

November 2012 the tenant could not stay in the unit because of the water damage and repairs. During that time, everything was moved out of the bathroom, the fans were in the way and extremely loud, and everything was covered up;

- 2) \$147 for no use of the clothes dryer during the entire tenancy – the tenant stated that at the outset of the tenancy the landlord told the tenant she could not use the dryer because it was too expensive and used too much electricity;
- 3) \$206.40 because the landlord twice illegally entered the rental unit; and
- 4) recovery of the security deposit, less the cost of carpet cleaning.

The landlord's response to the tenant's claim was as follows. The landlord stated that the burst pipe at the beginning of the tenancy "has nothing to do with this claim." The landlord acknowledged that the tenant would have been inconvenienced for two or three days in November 2012 when the fans were on, but the tenant was exaggerating the condition of the rental unit during the repairs. The tenant chose to go and stay at her parents' house. The landlord submitted evidence to show that she emailed the tenant on November 26, 2012 to inform her that the rental unit was liveable and only one more day of work was necessary, on November 29, 2012.

In regard to the dryer, the landlord stated that she never told the tenant that she couldn't use the dryer. The landlord stated that she did tell the tenant that if she washed heavy things like big blankets, the dryer wouldn't be able to handle it.

In regard to entries to the rental unit, the landlord stated that she always asked the tenant's permission before entering the rental unit.

### Analysis

#### *Landlord's Claim*

The tenant acknowledged the amount for the carpet cleaning, and I find that the landlord is entitled to \$80 for carpet cleaning.

I find that the landlord is entitled to the amount claimed for liquidated damages, as this amount was an agreed-upon term of the tenancy agreement as a genuine pre-estimate of the cost of re-renting in the event that the tenant ended the tenancy before the end of the fixed term. The landlord would have been entitled to receive the entire liquidated damages amount, regardless of the actual cost of re-renting, but the landlord chose to reduce this part of her claim, and I therefore grant the landlord the amount claimed of \$192.88 for liquidated damages.

I find that the landlord is not entitled to the amount claimed for paint. The landlord did not use all of the paint, and the landlord did not take into consideration the depreciated value of the paint. Under the Residential Tenancy Policy Guidelines, the average life of paint is four years. Therefore, in this case the value of the paint would have been reduced by 50 percent.

### *Tenant's Claim*

I find that the tenant did suffer some loss of quiet enjoyment in November 2012, during the time that there was water damage in her unit. The landlord acknowledged that the tenant would at least have been inconvenienced during the time that the fans were running. However, I also find that the tenant did not provide sufficient evidence to establish that it was necessary for her to vacate the rental unit for 14 days as a result of that incident. I find that the tenant may have suffered loss of quiet enjoyment or use of the rental unit on the day a pipe burst, but the tenant did not provide sufficient evidence to support that portion of her claim. I therefore find that for this portion of the tenant's application, she is entitled to nominal compensation of \$50 for loss of quiet enjoyment and loss of use during November 2012.

I find that the tenant did not provide sufficient evidence to establish that the landlord forbade the tenant from using the dryer, or that the landlord illegally entered the rental unit. These portions of the tenant's application are therefore dismissed.

As the landlord applied to retain the security deposit within the required time frame, the tenant is not entitled to double recovery of the security deposit.

### *Filing Fees*

As the landlord's application was mostly successful, she is entitled to recovery of the filing fee for the cost of her application.

As the tenant's application was mostly unsuccessful, she is not entitled to recovery of the filing fee for the cost of her application.

Conclusion

The landlord is entitled to \$322.88. The tenant is entitled to \$50. I therefore order that the landlord retain \$272.88 of the security deposit in full compensation of her award.

I grant the tenant an order under section 67 for the balance of the security deposit, in the amount of \$114.62. 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 *Residential Tenancy Act*.

Dated: May 14, 2013

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Residential Tenancy Branch

