



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding THE SCOTSMAN MOTEL  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND MNR MNSD MNDC FF  
                                 MNSD

### Preliminary Issues

#### **Determination of Amount of Security Deposit Being Held by Landlord**

The Tenant testified and confirmed that she entered into more than one tenancy with the previous owner. She stated that she initially moved into rental unit # first unit [information suppressed to protect privacy] and then began occupying unit # second unit [information suppressed to protect privacy] in 2008. She stated that she believes she began her month to month tenancy in unit # second unit [information suppressed to protect privacy] as of September 5, 2008.

The Tenant stated that she had paid the previous owner three payments towards a security deposit and pointed to her evidence as proof that payments were made in cash and by debit on March 6, 2011 and June 4, 2011. She also pointed to the Landlord's evidence of the "Rent Adjustment" statement and argued that this was proof of an additional \$300.00 payment.

The Landlord stated that he purchased the property as of December 30, 2011, and argued that after reviewing the rental records with the previous owner the Rent Adjustment document was created and used in the transfer of the property. As supported by his evidence, it was determined that the Tenant had paid \$300.00 as a security deposit for unit # second unit [information suppressed to protect privacy], and this was the amount transferred in the purchase of the property.

In making my finding I considered the following:

- (a) the debit receipt dated 2011/05/06 indicates a payment of \$900.00 which would indicate a payment of \$800.00 rent plus an additional \$100.00 but it does not prove what the \$100.00 was paid for;
- (b) the guest registration receipt # A shows \$800.00 total and notes "Deposit \$100.00 for the date of Mar 5 to Apr 5 ; this does not list a year anywhere so may have been anywhere from 2008 – 2011 and may be for a previous tenancy;
- (c) the guest registration receipt # B shows \$800.00 as paid and lists "Deposit \$300.00" for the date of June 5 to July 5 . This does not list a year and is not

proof that \$1,100.00 was actually paid on that date. It could mean that the \$300.00 deposit was previously paid and is being held on account and the current payment was \$800.00; this also may have been for a previous tenancy;

(d) the debit receipt dated 06/04/11 indicates a payment of \$800.00 which supports that rent for June 5 – July 5 on Guest Receipt # B was paid in the amount of \$800.00;

(e) Guest Receipt # B was paid in the amount of \$800.00 as noted above and this receipt also suggests that the previous owner had the habit of listing previously paid deposits currently held on each guest registration as shown on this receipt. This does not prove an additional payment of \$300.00 was made; and

(f) The rent adjustment document is sufficient proof that a security deposit amount of \$300.00 was transferred to the new owner and is currently being held in trust for the Tenant's account. This is not proof that an additional \$300.00 was paid for a security deposit by the Tenant to the new owner.

In consideration of the above, I find the Tenant has paid a total of **\$300.00** as a security deposit for unit # second unit [information suppressed to protect privacy] which relates to the tenancy relationship with the current Landlord, pursuant to section 62 of the Act. In the absence of evidence to the contrary, I further find that \$200.00 was initially paid in September 2008 and the balance of \$100.00 was paid on May 6, 2011, as indicated on the receipt listed above.

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and the Tenant and convened on March 28, 2013, for seventy minutes. The hearing reconvened on May 8, 2013, for sixty minutes.

The Landlord filed on January 07, 2013, to obtain a Monetary Order for: damage to the unit, site, or property; for unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on March 14, 2013, to obtain a Monetary Order for the return of her security deposit.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlord be awarded a Monetary Order?
2. Should the Tenant be awarded a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: a written statement from the moving company hired by the Tenant; the Landlord's written statement; rent adjustments when property was purchased; guest registration receipt; photos of the Tenant's unit; various letters issued to the Tenant and her advocate; and a 1 Month Notice to end tenancy issued September 27, 2012.

The Tenant submitted documentary evidence which included, among other things, copies of: her written submissions; a document indicating start of tenancy; rental adjustment statement; receipts indicating additional security deposit payments; invoice from moving company; December 21, 2012 letter providing forwarding address to Landlord; proof of service; and photos.

At the outset of this proceeding the Landlord testified that after he considered the Tenant's financial and medical situation he wished to amend his claim. He wished to have all compensation that will be awarded to the Landlord offset against any amount awarded to the Tenant and the \$300.00 security deposit. Furthermore, he stated that he wants forgo any amount awarded to the Landlord that may be in excess of this offset amount as he does not wish to cause the Tenant further financial hardship or go through collections.

The following facts were discussed during the course of this proceeding and were not in dispute:

- The Tenant entered into a tenancy for this unit with the previous owner some time in 2008;
- Rent was payable on the first of each month in the amount of \$800.00; and
- No move-in condition inspection report or move-out condition inspection reports were completed.
- The Tenant provided the Landlord with her forwarding address in writing on December 21, 2012 by registered mail.

The Landlord submitted that the Tenant used the rental unit as storage for her possessions and she did not reside there. He stated that the unit was filled with her

possessions to the point where no one could move around in the unit and which was causing rodent and health concerns.

The Landlord said he had issued the Tenant several warning letters to have her place cleaned up and then on September 27, 2012, they issued her a 1 Month Notice for cause. On October 5, 2012, they received a letter from the Tenant's advocate and worked to reach an agreement to have the Tenant move out. A few days later the Tenant informed the Landlord that she would be vacating the unit by October 31, 2012.

The Landlord testified that on October 31, 2012 the Tenant's movers showed up but the Tenant did not attend the unit. The movers came back on November 1, 2012; however, the Tenant had not packed anything and was not ready so the movers left again. On November 2, 2012, the movers arrived and the Tenant was still not fully prepared so the Landlord had his staff person attend and assist in packing and loading the Tenant's possessions to ensure the move happened on that day. Given the delay in her moving out and the condition she left the unit in they are seeking compensation for November 1, and 2<sup>nd</sup> rent and a loss of rental income during the time they had to clean and repair the unit.

The Landlord submitted that his staff member spent four or five hours assisting the Tenant with her move and an additional twelve hours of work was required to remove the remaining garbage and possessions that the Tenant left behind and to clean. He argued that the Tenant said she would return the next day to clean the unit but she never did. His staff had to spend several hours cleaning the entire unit which included carpet vacuuming, steam cleaning, and washing of all the bathroom fixtures. In addition to the cleaning he said they had to re-paint the entire unit due to the condition that was caused by her possessions being stacked up against the walls.

The Tenant submitted that she is entitled to the return of double her security deposit because the Landlord did not complete the required move in or move out condition inspection report forms. She argued that without the condition inspection report forms there is no real proof of the condition of the unit or any damage that may have been caused during her tenancy.

The Tenant testified that she was completely moved out of the unit by October 31, 2012, as supported by the moving receipt she provided in her evidence. She confirmed that her movers came and left several times during the course of her move and argued that they were very stressed because it was the end of the month and they had a lot of moves to complete. She paid her mover cash and they told her they had to leave her possessions on the truck over night because it was too late by the time they got to the storage unit.

The Tenant stated that the letter that was provided by the Landlord and written by her mover is incorrect. She moved out on October 31, 2012 and paid cash. She argued that her move happened a long time ago and that the mover is mistaken in his dates

and what occurred. She pointed to her moving receipt which is dated November 1, 2012 where it indicates it was a pack job as well as move.

The Tenant confirmed that she recalls a person attending to help her pack but she was already finished when the movers arrived. All she was doing was moving stuff around and onto the truck. She recalls the person's name but really did not know who she was. She said she recalls them helping her for about 20 minutes near the very end of her move. She denies leaving the rental unit dirty or with any debris. She stated that at the time her possessions were being load she was cleaning up. When asked what she did to clean up she stated she picked up loose papers and swept up.

The Landlord's Agent testified that she was the person who assisted the Tenant during her move. She stated that she had gotten to know the Tenant in months past when she would collect rent or answer the Tenant's questions so she felt she had a rapport with her. She stated that she was asked to assist the Tenant with her move on either a Thursday or Friday. She recalls the day of the actual move because it was one of her regular days off. She also recalls the mover coming a couple times on November 1<sup>st</sup> and the Tenant never showed up; therefore, she would have assisted with the move on Friday November 2<sup>nd</sup>. She knows for certain that it did not occur on Halloween, October 31, 2012.

The Landlord's Agent stated that when she arrived the Tenant was very upset, was crying, and she kept saying "these are my treasures I don't like people touching my things." She was able to calm down the Tenant and then she spent over four hours packing. She arrived at 1:30 p.m. and worked there until 5:45 p.m. when the mover left. One of the movers had left earlier in the day. When the last mover left there was still a lot of stuff left in the room. There were a few items the Tenant wanted to keep so the Agent said she took them to their office to hold for her. She said the Tenant came a few days later to pick those items up.

The Tenant confirmed that she recalled who the Agent was and that she had dealt with her before. She said she appreciated the help provided by the Agent and stated that she was very helpful. She argued that the move happened a long time ago so everyone does not remember the exact dates. She advised that her receipt shows four hours for the movers to pack and she paid on October 31, 2012.

The Agent confirmed the condition of the rental unit as noted in the mover's letter. She spent approximately four more hours, after the move, removing debris and doing the initial cleaning and for which she was paid \$14.00 per hour. She stated that she removed approximately ten bags of garbage, cleaned the bathroom and vacuumed the unit before their maid attended for another day to finish the cleaning. They also had to complete some drywall work, paint, and steam clean the carpets.

In closing, the Tenant submitted that the painting was required due to normal wear and tear and there was nothing wrong with her bed. She also argued that the photos

provided by the Landlord were taken prior to her move out date; therefore, they are not proof of the condition of her unit.

The Landlord pointed to the letter from the movers which indicate the receipt was issued on the date the cash payment was received, not the date the move was completed, and it also mentions the condition of the unit.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

### **Tenant's claim**

The undisputed evidence supports that the Landlord did not complete move-in or move-out condition inspection reports. When a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished.

Because the Landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, they lost their right to claim the security deposit for damage to the property.

The Landlord was therefore required to return the security deposit to the Tenant within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing. The Landlord received the Tenant's forwarding address on December 21, 2012, but did not return the security deposit within 15 days of that date.

Because the Landlord's right to claim against the security deposit for damage to the property was extinguished, and they failed to return the Tenant's security deposit within 15 days of having received her forwarding address, section 38 of the Act requires that the Landlord pay the Tenant double the amount of the deposit.

Based on the above I find the Tenant is entitled to monetary compensation in the amount of **\$600.97** (2 x \$300.00 plus \$0.97 interest).

### Landlord's claim

Section 21 of the Regulation provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, **unless either the landlord or the tenant has a preponderance of evidence to the contrary** [emphasis added].

Section 37(2) of the Act provides 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.

Notwithstanding the Tenant's argument that no condition inspection report forms were completed, I accept the Landlord's submission and evidence that the Tenant was not prepared for her move and that the rental unit was not cleaned at the end of the tenancy; and both situations caused the Landlord to suffer a loss.

Based on the aforementioned I find the Tenant has breached section 37(2) of the Act, leaving the rental unit unclean at the end of the tenancy. Accordingly, I find the Landlord has met the burden of proof and I award him damages in the amount of **\$320.00**. This amount is comprised 4 hours labour to assist with packing at \$14.00; 4 hours of the initial cleaning at \$14.00; disposal of waste and debris left behind \$25.00; labour and miscellaneous cleaning supplies used by the maid \$58.00; and carpet cleaning costs \$125.00.

The Tenant's evidence included a copy of the moving receipt #C dated November 1, 2012 and states:

*Pack job as well as move  
Paid \$75 on Oct. 31<sup>st</sup>  
4 hrs on Nov. 1<sup>st</sup>  
Paid cash*

Notwithstanding the Tenant's argument that she vacated the property on October 31, 2012, I accept the Landlord's submission that the move did not actually take place until November 2, 2012, as supported by the letter received from the mover as well as the Agent's testimony. Accordingly, I find the Tenant had possession of the unit until November 2, 2012.

The evidence supports the Tenant paid rent in full up to October 31, 2012, and retained possession until November 2, 2012. Therefore I find the Landlord is entitled to two days of overholding in the amount of **\$52.60** (2 x \$26.30 daily rate).

I accept that given the condition of the unit after the Tenant vacated plus the unexpected delays that occurred during the move that the Landlord was prevented from re-renting the unit for November 1, 2012. That being said, I find the Landlord was required to mitigate that loss and attempt to re-rent the unit as soon as possible. Therefore I award the Landlord compensation for loss of the remaining half months rent for November 1 – 15, 2012, in the amount of **\$347.40**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

The Landlord is granted monetary compensation in the amount of **\$770.00** (\$320.00 + \$52.60 + \$347.40 + \$50.00)

**Monetary Order Offset** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's monetary award as follows:

Landlord's Monetary Award	\$770.00
LESS: Tenant's Monetary Award	<u>600.97</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 109.03</u></b>

### Conclusion

The Tenant's monetary award has been offset against the amount awarded to the Landlord.

The Landlord has requested that no Monetary Order be issued as he does not wish to collect additional money from the Tenant. Accordingly, no Monetary Order has been granted to the Landlord.

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