



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Middlegate Developments Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR MNSD FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. An agent for the landlord, the tenant and an advocate for the tenant participated in the conference call hearing.

At the outset of the hearing, the tenant confirmed that she had received the landlord's application and evidence. The tenant did not submit any documentary evidence, but she gave testimony in the hearing. 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?

### Background and Evidence

The tenancy began on October 24, 2012 as a month-to-month tenancy, with rent in the amount of \$894 payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$447.

The tenancy agreement contains a clause that indicates the tenant must pay \$100 if the tenancy is terminated before the expiration of 5 months from the occupancy date. The tenancy agreement also requires that the drapes and carpets be professionally cleaned at the end of the tenancy.

On October 29, 2012, the tenant and the landlord carried out a joint move-in inspection and completed a condition inspection report. On January 28, 2013, the tenant gave the

landlord written notice that she intended to vacate the rental unit on January 31, 2013, and provided her forwarding address in writing. The landlord filed their application for monetary compensation and an order to keep the deposit on March 27, 2013.

### *Landlord's Claim*

The landlord stated that she gave the tenant written notice regarding the move-out inspection, in which the landlord set the time of 12:00 noon on January 31, 2013 for the inspection. The tenant did not show up at that time. Later in the day the tenant's agent attended and requested that the inspection be re-scheduled for 6:00 p.m. The landlord told the tenant's agent that she could not do the inspection at that time. The tenant did not participate in a move-out inspection with the landlord. The rental unit required cleaning after the tenant vacated.

The landlord was unable to re-rent the unit on such short notice. The unit was eventually re-rented for March 22, 2013. The tenant's rent cheque for February 2013 was NSF because the tenant put a stop-payment on the cheque.

The landlord has claimed the following amounts:

- 1) \$42.30 for cleaning drapes;
- 2) \$65 for carpet cleaning;
- 3) \$108 for six hours of cleaning, at \$18 per hour;
- 4) \$894 for February 2013 rent;
- 5) \$100 for ending the tenancy less than five months after the occupancy date, as per the tenancy agreement;
- 6) \$25 for a late payment fee for February 2013 rent; and
- 7) \$32 for an NSF fee for the February 2013 cheque.

In support of their claim, the landlord submitted 40 photographs depicting the dirty condition of the rental unit after the tenant vacated, invoices for cleaning and a detailed description of the cleaning done.

### *Tenant's Response*

The tenant stated that the rental unit was not clean when she moved in. The tenant disputed the amount claimed for cleaning, as the rental unit was a very small studio apartment and it would not have taken six hours to clean it. The tenant disputed the lease-breaking fee, as all the tenant wanted was a month-to-month tenancy.

## Analysis

Upon consideration of the evidence, I find as follows.

### *Landlord's Claim*

I find that the landlord is entitled to the amounts claimed for drape cleaning and carpet cleaning, as the tenant agreed to those items in the tenancy agreement. I also find that the landlord is entitled to the amount claimed for cleaning, as the landlord's photographs clearly depict numerous items that required cleaning, and the details of the cleaning support the landlord's claim for six hours of cleaning. It is not relevant that the unit was not clean at the beginning of the tenancy, as the tenant ought to have dealt with that issue at that time, and it does not relieve the tenant of the obligation to leave the unit in a reasonably clean condition at the end of the tenancy.

I find that the landlord is entitled to lost revenue for February 2013, as the landlord only had three days' notice of the tenant's intent to vacate the unit and it would not be reasonable to expect that the landlord could re-rent the unit for February 1, 2013.

I find that the landlord is not entitled to the \$100 fee for ending the lease less than five months after the date of occupation, as this tenancy was a month-to-month tenancy, and liquidated damages are only available on fixed-term tenancies.

I find that the landlord is not entitled to the amounts claimed for the late rent fee and NSF charge for February 2013 rent, as the landlord was aware that the tenancy ended on January 31, 2013, and at that time the landlord was required to return any post-dated cheques.

### *Security Deposit*

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

One exception to this rule is if the tenant extinguishes their right to claim the deposit under section 36 of the Act. The tenant's right to claim the deposit is extinguished if the landlord provides at least two opportunities to carry out the move-out inspection and the tenant fails to participate on either occasion.

In this case, the tenant provided her forwarding address in writing on January 28, 2013, and the tenancy ended on January 31, 2013. The landlord has failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the end of tenancy.

I find that the tenant did not extinguish her right to the security deposit, as the landlord did not offer the tenant a second opportunity to carry out the move-out inspection.

### *Filing Fee*

As the landlord's claim was mostly successful, I find they are entitled to recovery of the \$50 filing fee for the cost of their application.

### Conclusion

The landlord is entitled to \$1159.30. The tenant is entitled to double recovery of the security deposit, in the amount of \$894. I offset the tenant's amount against the landlord's award, and grant the landlord an order under section 67 for the balance due of \$265.30. 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: July 16, 2013

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Residential Tenancy Branch