



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT (2001) LTD.  
and [tenant name suppressed to protect privacy]

## **Decision**

**Dispute Codes:** MNSD, MND, MNDC, FF

## **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for repairs and cleaning and to justify keeping a portion of the security deposit in partial satisfaction of the claim. The application was also to deal with the tenant's claim seeking a refund of double the security deposit that was not returned by the landlord within 15 days.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

## **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation under section 67 of the *Act* for damages?

Is the tenant entitled to a refund of double the security deposit?

## **Background**

The tenancy began in October 2010 and a security deposit of \$562.50 was paid. The tenancy ended on December 31, 2012. According to the landlord, the unit was left in a state that required cleaning and repairs. The landlord testified the move-out condition inspection was done with the tenant present and was signed by both parties.

The landlord pointed out that notations made on the report verify that the refrigerator shelf was broken, the carpets needed to be cleaned and the rental unit required general cleaning to bring it up to a reasonably clean standard as required under the *Act*.

Submitted into evidence was a copy of the move-in and move-out condition inspection report with both signatures, indicating participation by the landlord and the tenant. The landlord testified that their position is that the tenant's signature on the "move-out" section of the form indicates that the tenant agreed to permit the landlord to deduct the costs of cleaning and repairs to the unit.

Also in evidence were copies of communications and copies of invoices, including: \$156.80 for the refrigerator repair, \$88.48 for carpet cleaning services and \$154.00 for professional cleaning. The total claims equal \$339.28. However, the landlord's application filed on April 30, 2013 indicates that the monetary claim is for \$449.28, plus the \$50.00 cost of the application.

The landlord testified that the tenant had not given the landlord a written forwarding address until April 8, 2013. According to the landlord the forwarding address was finally sent by email to the landlord. The landlord testified that after they received the address, they returned a portion of the tenant's security deposit and sent the tenant a cheque for \$180.72, issued to the tenant on April 9, 2013. The landlord testified that the tenant opted to pick up the cheque rather than have it mailed.

The tenant agreed that the move-out condition inspection was done with the tenant present. However, according to the tenant, they did not agree with all of the data on the form. The tenant testified that they disputed deductions made from their security deposit and objected to the fact that they were not given a copy of the move-in and move-out condition inspection reports as required under the Act.

The copy of the move-out report in evidence verifies that the Section "Z" on the form, reserved for the tenant to indicate whether they agreed or disagreed with the move-out condition inspection report, had not been completed nor signed by the tenant.

Section "AA" on the form, reserved for the tenant to indicate that they were consenting to specific deductions, was not completed. No monetary amount was filled in and the lines for the tenant's signature and the date were left blank.

In section "Y" of the report, the landlord had listed the damage and cleaning deficiencies, but no monetary amounts were shown for the costs. A notation by the landlord was included as follows,

*"we will deduct (indecipherable) for security deposit"*

The tenant disputed the landlord's testimony that their written forwarding address was not provided to the landlord until April 8, 2013. The tenant testified that the forwarding address was first given to the landlord on December 31, 2013, and the tenant personally witnessed the landlord writing down the address, while the tenant and a

second witness were present. The tenant stated that they have a recording of the verbal discussion that verifies that the landlord physically wrote down the address and verbally reconfirmed it with the tenant, including the postal code, after which the landlord promised to send the refund to the forwarding address they had just written down.

The tenant testified that they were eager to get the money that belonged to them and provided the forwarding address to the landlord more than once via email, from January 2013 to March 2013 but the landlord kept claiming not to have received it. The tenant testified that the landlord finally acknowledged that the address was received on April 9, 2013 after the tenant insisted and explained the landlord's obligations under the Act.

The landlord alleged that the address that was dictated by the tenant on December 31, 2013, was not complete and therefore could not be used to return the security deposit. The landlord testified that the tenant had not written down the address themselves, but only provided it verbally. The landlord denied that the tenant sent their forwarding address repeatedly by email.

The tenant testified that they finally made an application for dispute resolution on April 12, 2013 seeking a refund of double the security deposit.

In regard to the landlord's claims, the tenant did not dispute that the refrigerator shelf was broken and that the carpets needed to be cleaned.

Although the tenant did admit that the inside of the oven was left not clean, the tenant stated that they did not agree with the landlord's charges of \$154.00 for general cleaning of the suite. The tenant testified that they had thoroughly cleaned the rest of the rental unit and left it reasonably clean as required under the Act.

### **Analysis: Landlord's Claims**

With respect to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant fails to comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

In regard to cleaning and repairs, I find that section 37(2) of the Act states 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.

In regard to the landlord's claim for the \$156.80 cost to replace the shelf in the refrigerator and the \$88.48 cost of carpet cleaning, I find that the tenant has acknowledged that these amounts were justified. Therefore, I find that the landlord is entitled to be compensated in the amount of \$245.28.

I accept the landlord's evidence showing that they did incur the expenditures claimed for the cleaning. However, I find that this fact only satisfies element 3 of the test for damages. I find that a landlord may often prefer to have a rental unit cleaned to a standard beyond being "*reasonably clean*" in order to more effectively market the unit to prospective renters. I accept the tenant's testimony that they left the rental unit in a reasonably clean state in compliance with section 37 of the Act.

Accordingly, I find that the landlord is entitled to total compensation of \$245.58.

### **Analysis: Tenant's Claims**

With respect to the return of the tenant's security deposit, I find that the Act states that the landlord can only retain a deposit if the tenant agrees to this in writing at the end of the tenancy. If the permission is not in written form and signed by the tenant, then the landlord has no right to keep the deposit.

Contrary to the landlord's assertion, I do not find evidence proving that the tenant had ever signed over any portion of their security deposit on the move out condition inspection report.

I find that a landlord may be able to keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord makes an application for dispute resolution and successfully obtains a monetary order to retain the amount from the deposit to compensate the landlord for proven damages or losses caused by the tenant.

Under section 38 of the Act, the landlord must make the application or refund the security deposit within 15 days after the tenancy had ended and the landlord receives a written forwarding address.

I accept the tenant's testimony that on December 31, 2012, they provided the landlord with a complete forwarding address that the tenant ensured was being written down in the tenant's presence and that this forwarding address was verbally reconfirmed by the landlord's agent, along with a stated commitment that the tenant would receive the refund from the landlord by mail, without delay.

I find that the written communications from the landlord to the tenant in April 2013, did not appear to acknowledge that an "incomplete" forwarding address was on record, but stated that no forwarding address at all was on record. I find that the landlord's written records should have featured the address the tenant provided which was written down on December 31, 2012.

I find, on a balance of probabilities, it is more likely than not, that the tenant communicated with the landlord by email and provided their forwarding address after December and before April 8, 2013, requesting a refund of their deposit, which they were apparently eager to receive.

I find that the landlord did return a partial amount of the security deposit on April 9, 2013, after deducting a portion of the funds without written permission from the tenant, in violation of the Act. I find that the partial return occurred beyond the 15-day deadline to refund the deposit under the Act.

Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

Accordingly I find that the \$562.50 security deposit must be doubled and the tenant is therefore entitled to a credit of \$1,125.00 less the \$180.72 amount returned, for total compensation of \$944.28.

Given the above, I find that the landlord is entitled to monetary compensation of \$245.58, comprised of the \$156.80 cost to replace the shelf in the refrigerator and the \$88.48 cost of carpet cleaning consented to by the tenant.

I find that the tenant is entitled to compensation of \$944.28, comprised of double the security deposit minus the \$180.72 already refunded on April 9, 2013.

In setting off the two amounts, I find that the tenant is entitled to a further refund of \$698.70.

I hereby issue a monetary order in favour of the tenant for \$698.70, representing the remainder of the tenant's security deposit. This order must be served on the landlord in accordance with the Act and if necessary can be enforced through Small Claims Court.

The rest of the landlord's and the tenant's applications are dismissed without leave. Each party is responsible for their own application costs.

### **Conclusion**

Both parties are partly successful in their applications. The landlord is granted compensation for some cleaning and damages and the remainder of the tenant's security deposit is ordered returned to the tenant.

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 19, 2013

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Residential Tenancy Branch