



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

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

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for accrued rental arrears left by the tenant at the end of the tenancy. The landlord was also claiming the cost of cleaning. The landlord was seeking to keep the security deposit in partial satisfaction of the claim.

Despite being served by registered mail sent on May 14 2013, as verified by the Canada Post tracking number, the respondent did not appear.

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

Is the landlord entitled to compensation for rental arrears owed and cleaning?

### **Background and Evidence**

The fixed-term tenancy began in November 29, 2012 with rent of \$1,295.00 and a security deposit of \$647.50 was paid. A copy of the tenancy agreement was in evidence.

The landlord testified that the tenant moved on May 3, 2013 without giving adequate notice. The landlord is seeking rent owed for the month of May 2013 in the amount of \$1,295.00.

The landlord testified that the tenant left the rental unit in an unclean condition requiring 7 hours of general cleaning by two people at a cost of \$200.00 and carpet cleaning at a cost of \$150.00.

The landlord testified that the tenant gave the landlord verbal permission to retain the \$647.50 security deposit due to damage done to the rental unit.

The total monetary compensation claim being sought by the landlord, against the tenant, is \$2,292.00.

## **Analysis**

With respect to the rent, I find that section 26 of the Act states that rent must be paid when it is due. I find that the tenant did not pay in accordance with the Act and must now compensate the landlord for rental arrears in the amount of \$1,295.00.

In regard to the landlord's claim that the tenant agreed to forfeit the tenant's right to the refund of the security deposit in exchange for damage to the suite, I find that Section 38(4) states:

*A landlord may retain an amount from a security deposit or a pet damage deposit if,*

*(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or*

*(b) after the end of the tenancy, the director orders that the landlord may retain the amount. (my emphasis)*

I find that the landlord did not submit sufficient evidence confirming that the tenant gave the landlord written consent to allow them to keep the security deposit, nor proof of the details of the agreed-upon terms of this alleged arrangement. Given the above, I find that the landlord's claim to retain \$647.50, in addition to the rest of the monetary claims must be dismissed.

In regard to the claim for cleaning, in a claim for damage or loss under the Act, the party making the claim 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, and
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the landlord to prove that the damage/loss stemmed directly from a violation of the agreement or the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

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. I accept the landlord's testimony that the tenant did not leave the unit in a reasonably clean state and I find that the cleaning and carpet cleaning claims have met all elements of the test for damages. I find that the landlord is entitled to compensation of \$350.00.

Given the above, I find that the landlord has established a total monetary claim of \$1,695.00 comprised of \$1,295.00 in rental arrears, \$350.00 for cleaning and the \$50.00 cost of this application. I order that the landlord retain the security deposit of \$647.50 in partial satisfaction of the claim leaving a balance due of \$1,047.50.

I hereby grant the Landlord an order under section 67 for \$1,047.50. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remainder of the landlord's application is dismissed without leave.

### **Conclusion**

The landlord is partly successful in the application and is granted a monetary order in compensation for the rental arrears and cleaning.

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: August 13, 2013

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Residential Tenancy Branch

