



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNDC, MNSD, O, FF

### Introduction

This was a hearing with respect to the landlord's application for a monetary order and an order to retain the tenant's security and pet deposits. The hearing was conducted by conference call. The landlord called in and participated in the hearing. The tenant's father called in to represent his son. At the hearing the tenant's representative requested an adjournment of the proceeding because his son was unavailable to attend the hearing due to the location of his work in a remote area. The tenant's father had acted on his son's behalf with respect to the tenancy and I determined that he was not only knowledgeable about the landlord's claim, but was also a witness with respect to events related to the tenancy. I decided that an adjournment was not appropriate and proceeded with the hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?  
Is the landlord entitled to retain all or part of the tenant's security and pet deposits?

### Background and Evidence

The rental unit is a suite in the landlord's house in Surrey. The tenancy began on April 1, 2013. The monthly rent was \$900.00. The tenant paid a security deposit of \$450.00 and a pet deposit of \$450.00. In a form of agreement prepared by the landlord, she described the pet deposit as "non refundable", contrary to the provision of the *Residential Tenancy Act*.

The landlord initially claimed a monetary order in the amount of \$900.00; she later amended the application to claim the sum of \$2,553.12. The landlord testified that the tenant gave short notice verbally on May 20, 2013 and moved out before the end of May 2013, even though the tenancy was intended to be for a six month term. The landlord said that the tenant did not properly clean the rental unit and the walls were damaged and had to be repaired and repainted. She submitted an invoice for painting in the amount of \$480.00 but she said her husband did the work. The landlord submitted an e-mail quote of \$309.00 for cleaning the rental unit. She said that she did

the cleaning herself but expected to be reimbursed for the amount quoted for cleaning. The tenant said her husband cleaned the carpets in the rental unit. She requested \$150.00 for carpet cleaning, but no invoice was supplied. The landlord then said the carpet cleaning failed to remove stains caused by pet urination. She submitted another e-mail quote; this one for carpet replacement in the amount of \$1,653.12.

The tenant's representative testified that the tenant lost his job and had to quickly move to a remote location to secure work. He was prepared to pay rent for June because of the lack of proper notice. The tenant's representative attended at the rental unit on June 3<sup>rd</sup> to pay another month's rent and discovered that new tenants had already moved into the rental unit and had paid rent for the month of June. The tenant's representative noted that there was no condition inspection when the tenancy started and he said that rental unit and the carpets were not in perfect shape when the tenancy began; he said that there were stains in the carpet at the start of the tenancy and the paint was not fresh and had defects.

The landlord blamed the lack of a condition inspection on the fact that the tenant moved into the unit gradually. She said the carpets were seven years old and in good shape. She acknowledged that the unit was re-rented for the month of June and the carpets have not been replaced, but she said the new tenants complained about them and they will have to be replaced. The landlord accused the tenant of smoking marijuana in the rental unit and complained that he has harassed and threatened her after the tenancy ended.

### Analysis

The landlord bears the onus of proving that the tenant caused damage to the rental unit that exceeds reasonable wear and tear. She is also responsible for proving entitlement to the amounts claimed for cleaning and repairs; this generally takes the form of invoices or receipts for the work performed or payments made.

The landlord asserted that the tenant damaged the carpet, caused paint damage and put holes in the walls that required repainting. She produced a quote for painting, but said the painting, (like the cleaning) was not performed by the person who quoted for the work. The tenant's representative denied that there was damage or that the work was necessary. I do not accept that the tenant is somehow responsible for the landlord's failure to perform a condition inspection at the start of the tenancy. The photographs submitted by the landlord do not constitute evidence that the conditions depicted in the pictures are any different than they were at the commencement of the tenancy. In the absence of a condition inspection report and given the evidence of the tenant's representative directly contradicting the landlord's evidence as to damage, I find that the landlord has not proved, on a balance of probabilities that she is entitled to a monetary award in any amount for the cost of cleaning, repairs or carpet replacement. The landlord has included terms in the tenancy agreement that she drafted purporting to entitle her to keep deposits paid to her, as of right; these terms are contrary to the

provisions of the *Residential Tenancy Act* and the standard tenancy terms that are part of every tenancy agreement. These terms are therefore unenforceable.

I find that the landlord has not established that she is entitled to a monetary award in any amount. The landlord's application is dismissed without leave to reapply.

### Conclusion

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

#### **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security and pet deposits in partial satisfaction of her monetary claim. Because the claim has been dismissed in its entirety without leave to reapply it is appropriate that I order the return of the tenant's security and pet deposits; I so order and I grant the tenant a monetary order in the amount of \$900.00. This order may be registered 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: September 13, 2013

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Residential Tenancy Branch

