



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: MND, MNSD, MNDC, FF  
Tenant: MNSD, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and the agents for the tenant.

During the hearing the landlord confirmed that they provided a list only of the issues they were claiming to the tenant's agent with the Application for Dispute Resolution. The landlord confirmed that they did not provide copies of the invoices; estimates; or photographs to the tenant's agent.

The landlord stated they were informed by the Residential Tenancy Branch (RTB) staff that they only had to provide a list and not the actual evidence to the respondent. However, I reviewed the instructions on the Notice of Hearing documents with the landlord that clearly outline the instruction to serve both the other party and the RTB with "evidence to support your position".

I find it unlikely that RTB staff would instruct a party to not provide copies of their evidence to the other party, specifically when the instructions provided to the applicant provide such instruction.

As the tenant's agent did not receive any of the landlord's evidence I advised both parties I would not be considering the landlord's documentary evidence but that I would consider testimony only.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for cleaning and damage; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

### Background and Evidence

The parties agree the tenancy began on July 28, 2008 as a 1 year fixed term tenancy that converted to a month to month tenancy on August 1, 2009 for a monthly rent of \$650.00 due on the 1<sup>st</sup> of each month with a security deposit of \$325.00 paid. The tenant passed away on April 2, 2013. The tenant's son is the administrator for the estate.

The landlord confirmed that neither a move in nor a move out Condition Inspection Report was completed. The tenant's agent submits the landlord had his contact information and never contacted the agent to set up a move out inspection. The tenant's son submits that he was unaware the landlord was not happy with the condition of the rental unit and was never given an opportunity to deal with any deficiencies.

The landlord submits that they after the tenant passed away they had to clean the carpets in the unit on April 5, 2013 due to the odour and that because the stains did not come out they had the carpets re-cleaned in May 2013.

The landlord testified that the stains went right through the carpet and into the under pad and as such the carpeting had to be replaced. The tenant's son was unaware the landlord had cleaned the carpeting on April 5, 2013.

The tenant's son and his father testified that when the father returned the keys to the rental unit on April 30, 2013 the landlord had already pulled up part of the carpets and was painting the rental unit.

The landlord explained that the carpet had not yet been pulled up but that a portion of the carpet had been lifted to show the penetration of the stain to have gone through to the under pad and the requirement to replace the carpet was explained. The landlord testified the carpets were approximately 4 years old.

The landlord submits that there was cement put into the toilet and it had to be replaced. They also submit the tenant had smoked in the rental unit and the walls all had to be cleaned; the kitchen and bathroom both required cleaning.

The tenant's son testified that they had cleaned the rental unit thoroughly; that they had no idea why there would be cement in the toilet; and that while he was not completely sure he did not believe that his mother smoked in the rental unit.

The landlord submits that following expenses were incurred:

Description	Amount
Carpet cleaning – April 5, 2013	\$84.00
Carpet cleaning – May 2013	\$100.00
Flooring replacement materials	\$513.12
Flooring installation; toilet replacement	\$760.00
Cleaning	\$220.50
<b>Total</b>	<b>\$1677.62</b>

The tenant's agent submits that he provided his forwarding address in a letter sent to the landlord on June 17, 2013. The landlord acknowledges receiving this letter, around that time, but he is not sure what day he received it.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In regards to the landlords' claim for carpet cleaning and replacement I make the following findings:

- Carpet cleaning completed April 5, 2013 – I find the tenancy was still in effect and if the carpet required cleaning due to odours the landlord should have advised the tenant's son to provide him with an opportunity to clean the carpets. In failing to advised the tenant's son, I find the landlord did not take any steps to mitigate this loss;
- Carpet cleaning completed May 2013 – I find that as the landlord was aware, by their testimony, before April 30, 2013 that the carpet would be replaced then I find the tenant is not responsible for carpet cleaning that may have been completed in May 2013; and
- Carpet replacement – as the landlord has provided no evidence of the condition of the carpet at the start of the tenancy and as I cannot consider any evidence

submitted by the landlord as to the condition of the carpet or its potential need for replacement, I find the landlord has failed to establish the need for replacement flooring or its installation.

In regard to the landlord's claim that the toilet had to be replaced because there was cement in the toilet and the fact that the tenant was never advised of such because the landlord did not complete a move out inspection I find the landlord has failed to provide sufficient evidence to establish this portion of their claim.

In the absence of any documentary evidence that I can consider, and as the tenant's agent disputes the condition of the rental unit, I find the landlord has failed to establish the rental unit requires any cleaning.

Section 23 of the *Act* requires a landlord and tenant to inspect the rental unit on the day the tenant is entitled to possession of the unit. The Section goes on to state that it is the landlord's obligation to set the time of the inspection and complete a Condition Inspection Report and provide a copy of that Report to the tenants.

Section 24 stipulates that the landlord extinguishes their right to claim against a security deposit if the landlord does not provide the tenant with at least 2 opportunities to complete a move in inspection; or does provide the opportunity but then does not participate in the inspection; or does not complete the Condition Inspection Report and give a copy to the tenant.

Based on the landlord's testimony that they did not complete a move in inspection or a Condition Inspection Report at the start of the tenancy, I find the landlord has extinguished their right to claim against the deposit for cleaning or damage.

Section 35 of the *Act* stipulates that the landlord and tenant must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon day. The Section goes on to say the landlord must offer the tenant at least 2 opportunities to complete the inspection.

Section 36 states that, unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit or both, for damage to the residential property is extinguished if the landlord does not provide 2 opportunities for an inspection; does not participate in the inspection; or having made an inspection does not complete a condition inspection report.

Based on the landlord's testimony and despite the difficult circumstances for everyone at the end of this tenancy, I find again that the landlord has extinguished their right to claim against the deposit for cleaning and damage.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit

or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Based on the testimony of both parties I accept that the tenant's agent provided a forwarding address in writing in a letter date June 17, 2013. Allowing 5 days for mailing, I find the landlord would have received the tenant's agent's letter no later than June 22, 2013. As such, I find the landlords were required to either return the deposit to the tenant's agent or file an Application to claim against the deposit no later than July 7, 2013. The landlords applied on July 24, 2013.

Therefore I find the landlords have failed to comply with Section 38(1) and the tenant is entitled to double the deposit, pursuant to Section 38(6).

### Conclusion

For the reasons noted above, I dismiss the landlord's Application in its entirety.

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$700.00** comprised of \$650.00 double the amount of the deposit and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: October 08, 2013

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Residential Tenancy Branch

