



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – MNSD, FF

For the landlord - MND, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for the return of double the security deposit and to recover the filing fee from the landlords for the cost of this application. The landlord applied for a Monetary Order for damage to the unit, site or property and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the tenant entitled to recover double the security deposit?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

### Background and Evidence

The parties agree that this month to month tenancy started on October 01, 2012 and ended on June 14, 2013. Rent for this unit was \$725.00 per month and was due on the last day of each month in advance. The tenant paid a security deposit of \$362.50 on October 01, 2012. Both parties attended a move in inspection of the unit and a copy of the report has been provided in evidence. The tenant gave a forwarding address in writing to the landlord on June 24, 2013.

The tenant testifies that landlord did not arrange to do a move out inspection on the day the tenant moved out. The tenant testifies that the unit was left clean at that time and the carpets had been vacuumed. The tenant testifies that she went to hand back the keys to the landlord on June 14 and asked the landlord to do the inspection but the landlord told the tenant to come back later. The tenant testifies as she was moving then she could not come back but was still in the area for a few more days if the landlord had given her a date to return to do the inspection. The tenant testifies that the landlord did not contact her or arrange another time to do the inspection until the tenant received an e-mail from the landlord on July 08, 2013. By this time the tenant had already moved over five hours drive away. The tenant testifies that consequently no move out inspection was done at the end of the tenancy. The tenant therefore seeks to recover double the security deposit to the amount of \$725.00.

The landlord disputes the tenants claim. The landlord testifies that the tenant was given two opportunities to attend a move out inspection but failed to attend. The tenant did not inform the landlord that she was vacating on June 14, 2013 and the landlord was only aware of this at 7.00 p.m. that evening when the tenant came to hand back the keys. The tenant also gave late notice to end the tenancy a few days into June. The landlord testifies that she could not do the inspection with the tenant at that time as the landlord's young daughter was in the shower and could not be left alone. The landlord testifies that the tenant was given another opportunity for an inspection by e-mail on July 08, 2013. The landlord agrees that new tenants had moved into the unit on July 01, 2013.

The landlord testifies that the tenant was allowed to smoke in the unit however the addendum states that the tenant will be held responsible for any damage to the unit due to smoking. The landlord testifies that the tenant did not clean the carpets in the unit when she moved out and the landlord had this work done. The carpet cleaner has documented on the invoice that the carpets had a smell of smoke and this smell was still there even after the carpets had been cleaned. The landlord seeks to recover \$96.86 from the tenant for this work and an invoice has been provided in evidence.

The landlord testifies that the unit continued to smell of smoke so the landlord had to have the unit repainted in order to re-rent the unit. The landlord seeks to recover the amount of \$250.00 which includes paint and supplies. A copy of the invoice has been provided in evidence.

The landlord has applied to recover the cost for registered mail of \$10.33. The landlord testifies that she has not applied to keep the security deposit and this was an oversight.

The tenant disputes the landlord's claim. The tenant testifies that the unit was in a poor condition at the start of the tenancy and the move in report reflects this. The tenant testifies that she had to clean the unit and steam cleaned the carpets herself. The tenant testifies that as the carpets were in an unclean condition at the start of the tenancy the tenant is not required to clean them at the end of the tenancy. The tenant testifies that the rest of the unit was left in a clean condition better then it was at the start of the tenancy.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenant's claim to recover double the security deposit; I refer the parties to section 35(1) and 35 (2) of the *Residential Tenancy Act* (Act) which states:

**35** (1) *The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

*(a) on or after the day the tenant ceases to occupy the rental unit, or*

*(b) on another mutually agreed day.*

*(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

It is my decision that the landlord did not offer the tenant two opportunities's to attend a move out inspection before new tenants moved into the unit as the landlord did not send the e-mail to the tenant asking for the tenant to attend an inspection until after the new tenants had taken possession of the unit. Consequently s. 36 (2)(a) of the *Act* states:

*(2) 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 residential property is extinguished if the landlord*

*(a) does not comply with section 35 (2) [2 opportunities for inspection],*

I therefore find in favour of the tenants claim to recover double the security deposit. The tenant will receive an amount of **\$725.00** pursuant to s. 38(6)(b) Of the *Act* as the landlord has extinguished her right to claim against the security deposit and has not returned it to the tenant within 15 days of receiving the tenants forwarding address in writing.

With regard to the landlords claim for damages; s. 32(1) of the *Act* states:

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The move in condition inspection report clearly indicates that the carpets were not clean at the start of the tenancy and neither were many areas of the rest of the unit.

At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair. As the landlord failed to do so at the start of the tenancy then a landlord may not claim against the tenant for carpet cleaning at the end of the tenancy.

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible. The landlord has provided no evidence to show that the unit required painting because of the actions of the tenant due to smoking. Consequently, the landlord's claim for damages must fail.

With regard to the landlords claim to recover registered mail costs; there is no provision under the *Act* for costs of this nature to be awarded. Therefore this section of the landlord's claim is dismissed.

As the tenant has been successful with this application I find the tenant is entitled to recover the **\$50.00** filing fee from the landlord. As the landlord has not been successful then the landlord must bear the cost of filing her own application.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$775.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlord's application is dismissed in its entirety without leave to reapply.

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 24, 2013

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Residential Tenancy Branch

