



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MND, MNR, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on September 11, 2013 for:

1. An Order for the return of the security deposit – Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on October 1, 2013 for:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damage to the unit – Section 67;
3. An Order to retain the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to return of their respective filing fees?

Background and Evidence

The following are agreed facts: The tenancy started on September 15, 2009 and ended on August 15, 2013. Rent of \$1,500.00 was payable monthly and at the outset of the tenancy the Landlord collected \$750.00 as a security deposit. The Parties mutually conducted both a move-in and move-out inspection and the Tenant provided its forwarding address on the move-out report. The Tenant owes **\$4.07** for unpaid utilities.

The Tenant states that the Landlord has not returned the security deposit and claims its return.

The Landlord states that the Tenant damaged two pieces of laminate flooring and claims \$400.00 for the labour costs only. The Landlord states that the costs claimed are based on an estimate provided by one contractor. The Landlord states that the flooring was originally installed eleven years ago. The Tenant states that the floor was scratched by the Tenants but that the amount claimed is too high as a portion of the damage would be from reasonable wear and tear.

The Landlord submits a tenancy agreement in which the addendum provides for a late rent fee of \$5.00 per day. The Landlord claims a combined \$100.00 for late fees for July and August 20, 2013.

The Landlord states that the Tenant gave notice on July 1, 2013 to end the tenancy on August 15, 2013. The Landlord states that the Tenant was told that the Landlord did not foresee a problem renting the unit for August 15, 2013. The Landlord states that on August 1, 2013 \$750.00 was accepted for rent and that additional rent was not asked for until it was determined that the unit would not rent for the 15<sup>th</sup> of the month. The Landlord states that the unit was advertised from July 8, 2013 until a tenant was found for September 1, 2013. The Landlord claims \$750.00 for unpaid rent for August 2013. The Tenant submits that the Landlord agreed that they could move out on August 15, 2013 and that they were not told until September 1, 2013 that the Landlord was seeking additional rent. The Tenant states that on August 25, 2013 new tenants were seen

occupying the unit and that the Landlord only asked for utility payments to August 23, 2013. The Landlord states that no tenants moved into the unit early.

### Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord neither returned the security deposit or made an application for dispute resolution within 15 days of receipt of the Tenant's forwarding address, I find that the Landlord must pay the Tenant double the security deposit in the amount of **\$1,500.00**.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Residential Tenancy Branch Policy guideline 40, Useful Life of Building Elements, indicates that laminate flooring would have a useful life expectancy of up to 20 years. Although there is no dispute that the Tenants caused the floor to be scratched in two places, given that the flooring is 11 years old, I find that the amount claimed greatly exceeds the value lost from the presence of the two scratches and that the Landlord is only entitled to a nominal amount of **\$100.00**.

Section 5 of the Act provides that a landlord may not avoid or contract out of the Act and any attempt to do so is of no effect. Section 6 of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. Section 7 of the Residential Tenancy Regulation provides that a landlord

may charge a fee of not more than \$25.00 for late payment of rent. As the tenancy agreement provides for a fee that may be more than \$25.00 in any month, I find that this provision is inconsistent with the Regulation and that this provision is therefore not enforceable and of no effect.

Given the Landlord's evidence that half of the month's rent was accepted for August 2013, and the undisputed evidence that more rent was not sought until after the end of the tenancy, I find that the Landlord accepted the Tenant's notice to end the tenancy for August 15, 2013 and that the Landlord has therefore failed to substantiate that the Tenant did anything to cause any loss of rent, or that the Tenant breached the tenancy agreement or Act. I therefore dismiss the Landlord's claim for unpaid rent.

Based on the agreement of the Tenant, the Landlord has substantiated an entitlement to **\$4.07** for unpaid utilities for a total entitlement of **\$104.07**. As the Landlord's application has met with minimal success, I decline to award recovery of the filing fee.

As the Tenant's application has met with success, I find that the Tenants are entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,550.00**. Deducting the Landlord's entitlement of **\$104.07** leaves **\$1,445.93** owed by the Landlord to the Tenant.

### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,445.93**. If necessary, this order may be filed 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: November 22, 2013

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Residential Tenancy Branch

