



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by leaving it at his residence on August 13, 2013. The Tenant said he received the Landlords' hearing package. Based on the evidence of the Landlord and Tenant, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is there damage to the unit, site or property and if so how much?
2. Are the Landlords entitled to compensation for damage and if so how much?
3. Is there a loss or damage and if so how much?
4. Are the Landlords entitled to compensation for loss or damage and if so how much?
5. Are the Landlords entitled to retain the Tenants security deposit?

### Background and Evidence

This tenancy started on December 1, 2009 as a 1 year fixed term tenancy and then the tenancy renewed on a month to month basis. Rent was \$750.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$350.00 at the start of the tenancy. This tenancy ended on July 27, 2013.

The Landlord said they did not complete a move in or move out condition inspection report, but the Tenant caused damage to the unit, he did not clean the unit and because

of the condition of the unit the Landlord was unwilling to show the unit to prospective tenants. The Landlords submitted photographs of the unit while the Tenant was still living in the rental unit to show the poor condition. As a result the Landlord is claiming lost rental income of \$556.00 for the time period of August 1, 2013 to August 24, 2013. As well the Landlord is claiming the costs to repair a carpet for \$285.00, for cleaning the carpet in the amount of \$50.00 and general cleaning of the unit in the amount of \$75.00. The Landlord did not submit any evidence as in receipts to verify the amounts claimed for damages. The Landlord said they are also requesting the recovery of the filing fee of \$50.00. The Landlords total claim is \$1,016.00.

The Tenant said he gave the Landlord his forwarding address by email on July 30, 2013 and he has not received his security deposit back. The Tenant continued to say that he cleaned the unit before leaving and the Landlord said he would repair the carpet with a piece from the closet. As well the Tenant said the Landlord told him on July 9, 2013 that they were not going to rent the unit for August therefore the Tenant said he is not responsible for any lost rental for August, 2013.

The Tenant indicated in his evidence package that because the Landlord did not do a move in or move out condition inspection report as required by the Act and regulations the Landlords' claim on his security deposit is extinguished.

### Analysis

Section 24 of the Act says the right of a 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 23 (3) *[2 opportunities for inspection]*,
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) **does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations**

As the Landlords did not complete the condition inspection reports in accordance with the Act and regulations; I dismiss the Landlords' claim to retain the Tenant's security deposit of \$350.00.

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

As the Landlord said she did not do the move in condition inspection report the Landlord is unable to establish the condition of the rental unit at the start of the tenancy. As well, there is no move out inspection report completed by the Landlord and the Tenant therefore; I find that the Landlord has not established proof that the Tenant damaged the rental unit. Consequently, I dismiss the Landlord's application for damages for repairing the carpet, and cleaning the unit.

Further, the Landlord said they could not show the unit to potential new tenants because the unit was too messy and cluttered and as such the Tenant should be responsible for the lost rental income from August 1, 2013 to August 24, 2013 in the amount of \$556.00. It is the Tenant's responsibility to maintain a unit to health and safety standards and to give access to the Landlord to show a unit, but while the Tenant has control of the unit in a tenancy the Tenant is not required to have the unit in show condition to present to potential tenants. Consequently, I dismiss the Landlords' request for lost rental income for August, 2013 in the amount of \$556.00.

As well, as the Landlord was not successful in this matter I dismiss their application to recover the filing fee of \$50.00 from the Tenant.

### Conclusion

The Landlords' application is dismissed 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: November 20, 2013

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Residential Tenancy Branch

