



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with two related applications. File L is the landlord's application for an order of possession, a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. File T is the tenant's application for return of the security deposit and pet damage deposit. Both parties appeared and had an opportunity to be heard. As the parties and circumstances are the same for both applications one decision will be rendered for both.

At the beginning of the hearing the parties acknowledged that the tenant had moved out of the rental unit and an order of possession was not required.

### Issue(s) to be Decided

Is either party entitled to a monetary order and, if so, in what amount?

### Background and Evidence

This one year fixed term tenancy started March 1, 2013. The monthly rent of \$725.00 was due on the first day of the month. The tenant paid a security deposit of \$362.50 and a pet damage deposit of \$362.50. A move-in inspection was conducted and a move-in condition inspection report was completed.

The landlord received complaints about the tenant and her gentleman friend from the other residents of the building. He also had some conflict with the tenant's friend. On or about September 1, the landlord and the tenant had a conversation in which he expressed the view that the tenancy was not working. When the tenant heard about the complaints from the neighbours she did not want to live in the unit any longer than necessary either.

Although the landlord is familiar with the "Mutual Agreement to End Tenancy" that option was not discussed. He suggested to the tenant that the easiest way to resolve the situation was to give the tenant an eviction notice. The tenant testified that she understood this to mean that she would not pay any rent for September in return for the tenancy ending. The landlord testified that he never suggested that the rent not be paid; he did say an eviction would end the tenancy.

The tenant did not pay the September rent. On September 2 the landlord issued and served a 10 Day Notice to End Tenancy for Non-payment of Rent with an effective date of September 12.

The tenant moved out of the unit on September 12. A move-out inspection was conducted by the landlord's wife and a move-out condition inspection report was completed and signed by both parties. The tenant said she did not read the form before signing it. The tenant gave the landlord her forwarding address in writing on that date.

The landlord filed this application for dispute resolution on September 24. In addition to claiming the full September rent the landlord also claimed for some damages.

The landlord claimed \$61.00 for repainting the ceiling of the unit. He said there was a stain approximately 3 feet by 3 feet. He did not know when the ceiling had been last painted. He has owned this building for three or four years and this is the first time he had painted the ceiling. He acknowledged that the stain was not noted on the move-out condition inspection report. He said his wife told him that she had missed it. The tenant testified that there was no conversation about the stain nor had it been brought to her attention at the move-out inspection.

The landlord claimed \$11.41 for burned out light bulbs and \$15.00 (estimated cost) for a missing mirror. The tenant said she had not noticed whether any light bulbs were burned out and in the walk through the landlord's wife had told her not to worry about the mirror.

The landlord claimed the replacement cost of a missing composter, \$28.00, and a missing garbage can, \$20.16. The tenant agreed with the claim for the garbage can but said she had not been provided with a composter at the start of the tenancy.

### Analysis

#### *September Rent*

I find that there was an agreement that the tenancy would end as soon as possible. Other than a Mutual Agreement to End Tenancy the simplest way for a landlord to end a tenancy is an undisputed 10 Day Notice to End Tenancy. I find that the parties agreed that this would be the procedure followed in order to end this tenancy.

I think the topic of the September rent was carefully avoided in the discussion between the landlord and the tenant. The tenant assumed/hoped that in return for her cooperation the landlord would not pursue any claim for the month's rent. The landlord

assumed/hoped that he would be able to enforce the claim usually granted to landlords applying for an order of possession based upon a 10 Day Notice to End Tenancy, payment of that month's rent. If the parties had proceeded with a formal Mutual End of Tenancy Agreement a more thorough negotiation about payment of rent and move-out date might have occurred.

I find that if the landlord had not suggested this method of ending this tenancy the tenant would have paid the September rent thereby forcing the landlord to either serve a 1 Month Notice to End Tenancy for Cause on the tenant or negotiating a Mutual Agreement to End Tenancy. Because the tenant followed the landlord's suggestion, he was able to end this tenancy quickly and without any trouble.

On the other hand, the tenant did have the use of the rental unit for twelve days and should pay for the use of it for that time.

I find that the tenant is liable for unpaid rent in the amount of \$290.04 (\$24.17/day X 12 days).

#### *Damages*

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

In a claim by a landlord for damage to property, the normal measure is the cost of repairs or replacement cost (less an allowance for depreciation), whichever is lesser. The Residential Tenancy Branch has developed a schedule for the expected life of fixtures and finishes in rental units. This depreciation schedule is published in *Residential Tenancy Branch Guideline 40: Useful Life of Building Elements* and is available on-line at the Residential Tenancy Branch web site.

The great advantage of a property completed move-in or move-out condition inspection report is that section 21 of the *Residential Tenancy Regulation* provides that in a dispute resolution proceeding, a condition inspection report completed in accordance with the legislation is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

With respect to the claim for painting the stain on the ceiling the expected useful life of interior paint in a rental unit is four years. The landlord testified that he had owned this

property for three or four years and he did not know that last time the ceiling had been painted. The depreciated value of the ceiling is nil. Accordingly, this claim is dismissed.

Although the move-out condition inspection report did not note the broken mirror both parties testified that it had been broken. I allow the landlord \$15.00 as claimed for this item.

The tenant agreed with the landlord's claim for the missing garbage can in the amount of \$20.16.

The tenant argued that a composter was never provided but it is clearly stated on the move-in condition inspection report that she signed. Accordingly, I allow the landlord the \$28.0 claimed for the composter.

The missing light bulbs were not listed on the move-out condition inspection report until after the tenant had signed it so the presumption provided by section 21 does not apply. The landlord testified that the light bulbs were missing; the tenant testified that she did not notice whether the lights bulbs were missing. She did not actually deny that the light bulbs needed to be replaced so I find that the landlord has met the standard of proof on this item. The claim of \$11.41 is allowed.

In summary I award the landlord a total of \$90.41 for damages.

#### *Security Deposit and Pet Damage Deposit*

Section 38(1) of the *Residential Tenancy 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 either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit. Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit.

The tenant gave the landlord her forwarding address in writing on September 12. The landlord filed his application for dispute resolution claiming against the security deposit and pet damage deposit on September 24, within the 15 day time limit. Accordingly, the landlord is not subject to the section 38(6) penalty.

Section 72(2) provides that if a tenant is ordered to make any payment to the landlord that amount may be deducted from any security deposit or pet damage deposit due to the tenant.

Accordingly, I order that the landlord may retain \$364.61 from the security deposit and pet damage deposit paid by the tenant and that the balance of \$360.39 must be repaid

to the tenant. A monetary order in that amount is granted to the tenant. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court.

*Filing Fees*

Each party was partially successful on their respective applications and are therefore entitled to reimbursement from the other of the filing fee they paid. As these awards cancel each other out, no order with respect to either filing fee will be made.

Conclusion

A monetary order in favour of the landlord has been made. The landlord has been ordered to pay the balance of the security deposit and pet damage deposits to the tenant and a monetary order in that amount has been granted to the tenant.

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: January 06, 2014

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Residential Tenancy Branch