



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC MNSD FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67 for damages to the property;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) For a return of twice the security deposit pursuant to section 38 and a monetary order for compensation for consequences suffered due to non return of the deposit; and
- e) To recover the filing fee for this application.

### **SERVICE**

Both parties attended the hearing and each confirmed receipt of the Notice to End Tenancy dated July 25, 2013 and of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

### **Issue(s) to be Decided:**

The tenant vacated the unit on August 31, 2013. Has the landlord proved on the balance of probabilities that the tenant did damage to the property, that it was beyond reasonable wear and tear and the amount it cost to fix the damage? If so, what is the amount of the compensation and is the landlord entitled to recover filing fees also?

Is the tenant entitled to twice his security deposit refunded, to other costs and to recover filing fees for the application?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. This was a difficult hearing as English is the second language of the landlord; the tenant and I both had trouble understanding the husband and wife who are the landlords as they also prompted each other in the background while trying to give evidence. However, they set out their claim well in typewritten sheets so the parties were able to address each issue in the hearing.

It is undisputed that the tenancy commenced in October 2009, that rent was \$3650 a month and a security deposit of \$1750 was paid on September 28, 2009. It was undisputed that the landlord served a Notice to End Tenancy effective August 31, 2013 and the tenant vacated in accordance with that Notice although he had a fixed term lease expiring September 30, 2013. The landlord states he served the Notice in error and both parties agree that the tenant received one month free rent in compensation for the section 49 Notice but the landlord applied this to rent for September 2013 as he said there was a lease and the tenant broke the lease.

This is a 90 year old house and the tenant rented the whole house and then rented the lower area to two other persons.

The landlord claims as follows:

1. \$672: to repair damaged hardwood floor on the main floor; it is 90 years old and the tenant denies damaging it.
2. \$56: to replace a lock and keys as a tenant to whom the main tenant rented delayed in returning the keys. The landlord said he had to do this for security although he got a set back from the other downstairs tenant.
3. \$56: to repair the basement dining room (or eating area) ceiling. The tenant said there was no damage to it.
4. \$22.40 for missing bed parts. The tenant said the lower tenant may not have returned all the bed parts but he is not responsible for her. He said there was no agreement concerning furniture but the landlord had left some behind.
5. \$315: for cleaning up after a flood. The flood was found to be caused by the city sewer backing up.
6. \$83.15 to replace a broken glass top on a desk; the tenant denies breaking it.
7. \$2063.04 to replace a carpet in the upstairs bedroom area that the landlord estimates at 10 years old. The tenant said the landlord's children shared it before his children and neither he nor his children did further damage to it.
8. \$56: for roller of a love seat that was broken. The tenant said this was a piece of furniture left behind by the landlord and it was never discussed.
9. \$960.33 for returning the lawn back to normal. In the lease addendum, the tenant is responsible for maintaining the lawn and garden for a reduction of rent

of \$25 a month. The tenant said he did maintain the lawn but the first supplied lawnmower broke and the older one had many problems; he said the landlord came over once and used his own mower when he complained but did not fix the problem. Nevertheless, he said he did maintain the lawn with the old equipment and also did weeding.

The landlord provided a copy of the lease, invoices and many photographs to support his claim. The tenant agreed he received the evidence except for the photographs and the landlord said he had not sent the photographs to the tenant.

The tenant claims twice his security deposit refunded as the landlord refused to return it in accordance with section 38 of the Act. The landlord said that he tried to make two appointments for the tenant to do a condition inspection report but the tenant did not attend. The tenant said the landlord in September, sixteen days after he vacated, tried to get him to look at damages that he supposedly caused and to sign a document to authorize large deductions from his deposit so he did not attend. He said there was no condition inspection arranged for the end of August 2013 when he vacated. No move-in or move out reports were supplied as evidence.

The tenant also claims that the lack of the return of his security deposit caused him extreme financial hardship and he claims \$399.42 compensation for utility bills which he had problems paying and a discretionary amount for the hardship in trying to pay another security deposit without the resources of the refund to assist. Invoices for the utility bills are included in evidence.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

The onus is on each applicant to prove on a balance of probabilities their claim. I find the landlord did not provide copies of the photographic evidence to the tenant. Rule 3.5 of the Residential Tenancy Branch Rules of Procedure states evidence that the applicant intends to rely on must be served on the respondent ... at least 5 days before the dispute resolution proceeding. If this is not done, the arbitrator may apply Rule 11 and in their discretion decide whether to accept the evidence. In this case, I have decided not to consider the photographic evidence as the tenant had no opportunity to review and respond to it and to order an adjournment at this point would seriously prejudice the tenant as he states he has waited a long time to have the matter of his security deposit arbitrated and is in financial need. The landlord served the tenant with the other evidence in file including invoices.

In respect to the landlord's claim of \$672 for repair to a 90 year old hardwood floor, I find the Residential Tenancy Policy Guidelines assign a useful life to items in rented premises which are designed to account for reasonable wear and tear. Hardwood floors are assigned a useful life of 20 years so, whether or not the tenant damaged the 90 year old hardwood floor is moot as it is beyond its useful life. Therefore I find the landlord entitled to no compensation for the floor.

The landlord also claims \$2063.04 for replacement of a carpet which he said is at least 10 years old. As the Guidelines assign a useful life of carpet at 10 years, I find the landlord not entitled to recover compensation for replacement of this carpet as it is beyond its useful life.

I find the landlord entitled to recover \$56 to replace a lock when keys were not returned. Although the tenant pointed out that there was only a delay and the landlord could have copied keys that were available, I find the landlord's evidence credible that he was concerned for security when a downstairs tenant did not return keys for a period of time. Although the tenant said he was not responsible for the actions of the downstairs tenants, I find he had the head lease and he sublet part of the premises. As the head tenant who rented the premises, I find him responsible for any damages caused by his sub lessees.

Regarding the claim for \$56 to repair a downstairs ceiling, I find there was no move-in condition inspection report and the tenant has denied this claim. Therefore, I find the landlord has not satisfied the onus of proving on a balance of probabilities that he is entitled to compensation for this repair.

In respect to the landlord's claims for various missing parts of furniture and a broken glass top of a table, I find the lease did not include furniture, there was no condition inspection report at move-in and the tenant has denied any responsibility for any of these missing or broken parts. Therefore, I find the landlord has not satisfied the onus of proving on a balance of probabilities that he is entitled to compensation for any of these furniture items.

The landlord claims \$315 for cleaning up after a flood which the weight of the evidence indicates was caused by city sewer backup. I find the weight of the evidence is that the tenant did not cause the flood and therefore should not be responsible to compensate the landlord for cleanup.

Concerning the claim for \$960.33 for returning the lawn to normal, I find the estimate was for "lawn renovation" including aerating, topdressing with compost and soil mix,

applying lime, over seeding and fall fertilizer. As the tenant noted in the hearing, this goes far beyond what he agreed to do in the addendum to the lease. He states he mowed and weeded which is regular lawn maintenance and only had \$25 a month reduction in rent. I find the tenant's evidence credible and prefer it to the landlord's as aerating, topdressing, liming and fall fertilizer would encompass more than regular maintenance. I note that the estimate did not mention mowing and weeding which was the tenant's maintenance responsibility. Therefore, I find insufficient evidence to support the landlord's claim that the tenant is responsible to compensate him for this work and award the landlord no compensation for this.

On the tenant's application, the onus is on him to prove on the balance of probabilities that twice the security deposit should be refunded in accordance with section 38 of the Act. I find the tenant vacated on August 31, 2013 and provided his forwarding address in writing on or before that date. I find the landlord has not refunded the tenant's security deposit and did not file their application to claim against the deposit until October 10, 2013 which is well beyond the 15 day limitation set out in section 38 of the Act. The landlord stated that the security deposit was not refunded as the tenant refused to accept it with a deduction for damages and was uncooperative in signing the details of the damage agreement within 15 days of his move-out date. I find the Act does not require a tenant to accept the landlord's assessment of damages and only the balance of his deposit. Section 38 states that the landlord's recourse in such a situation is to file an Application to claim damages against the security deposit within the 15 day period and this landlord did not do that. I find the tenant entitled to recover twice their security deposit.

In respect to the tenant's other claims for financial consequences suffered due to delay of the return of the deposit, I find section 38 in awarding him twice the deposit is compensation for the delay of the landlord and I find him not entitled to further compensation for utility bills which he had to pay in any case or for hardship caused by making a security deposit to rent another property.

Although the landlord said he gave the tenant two opportunities for a condition inspection at move-out, I find the weight of the evidence in his typewritten claim notes that he gave him two opportunities to do inspection of the damages but it was 16 days after he had moved out and to negotiate the amount of the security deposit that might be returned to him. I find the weight of the evidence is the landlord had prepared a list of damages to deduct from the security deposit and apparently the landlord made it clear to the tenant that he wanted the tenant to sign for an agreed deduction at the meeting so the tenant refused as he did not agree that he had done damage. I do not find that this was a meeting for a mutual condition inspection report. There was no

evidence supplied of a condition inspection report done at move-in and none provided as evidence of an inspection done by the landlord on move-out. Therefore, I give little weight to evidence of these appointments.

**Conclusion:**

I find the landlord entitled to compensation for damages as calculated below and to recover filing fees for his application as he had limited success.

I find the tenant entitled to recover twice his security deposit and to recover his filing fee as calculated below.

Calculation of Monetary Award:

Tenant original security deposit (no interest 2009-13)	1750.00
Twice original deposit pursuant to section 38 of the Act	1750.00
Filing fee for this application to tenant	50.00
Landlord compensation for lock change	-56.00
Landlord filing fee	-50.00
Total Monetary Order in Favour of Tenant	3444,00

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: December 12, 2013

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Residential Tenancy Branch

