



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenant filed an Application on October 21, 2013, for a monetary order for return of double the security deposit under section 38 of the Act, and to recover the filing fee for the Application.

The Landlord filed an Application on November 1, 2013, requesting a monetary order for unpaid rent, for money owed or compensation under the Act or tenancy agreement, for an order to keep the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issues

The Tenant testified he had not received the Application or the evidence of the Landlord and was unaware the Landlord had filed a claim.

The Landlord testified he served the Tenant with his Application and evidence by registered mail, sent on November 1, 2013. The Landlord included a copy of the

registered mail receipt in evidence. The Tenant testified he received no notice of this; however, tracking information from Canada Post indicates there were two delivery notice cards left at the Tenant's address. Under section 90 of the Act registered mail is deemed served five days after mailing. Furthermore, refusal or neglect to receive registered mail is not a ground for review under the Act.

Nevertheless, the Tenant was asked if he wanted an adjournment in order to have the Landlord re-serve him with the Application and evidence; however, the Tenant declined an adjournment as he wished to proceed and he agreed to the hearing of the Landlord's Application in this hearing.

#### Issue(s) to be Decided

Is the Landlord entitled to the relief sought?

Is the Tenant entitled to return of double the security deposit?

#### Background and Evidence

This tenancy began on or about August 1, 2012, with the parties entering into a written tenancy agreement; however, neither party submitted a copy of the tenancy agreement in evidence. The Tenant paid a security deposit of \$1,225.00 on July 31 or August 1, 2012, and the monthly rent was \$2,450.00, payable on the first day of each month. I note no interest is payable on deposits paid since 2009.

#### The Tenant's Claim

The Tenant testified that the Landlord did not perform incoming or outgoing condition inspection reports.

The Tenant testified he vacated the rental unit on September 1, 2013, and provided the Landlord with a written notice of the address to forward the security deposit to on September 4, 2013. The Tenant testified he did not agree that the Landlord could retain any portion of the security deposit.

In reply, the Landlord testified he did not perform an incoming condition inspection report because at the outset of the tenancy the Tenant had provided the Landlord with a detailed list of the repairs required in the rental unit when he moved in.

The Landlord testified that the rental unit was not finished when the Tenant moved in as the exterior was still under construction. The Landlord testified that the Tenant gave him a detailed list of the items in the rental unit that needed improving.

The Landlord acknowledged that his Agent did receive the forwarding address of the Tenant as described above, as the Landlord was out of town at the time of the Tenant moving out.

### Landlord's Claims

The Landlord testified there had been a troubled relationship with the Tenant during the tenancy. There had been a number of issues and one prior Dispute Resolution hearing in 2012.

The Landlord testified there had been a fixed term tenancy; however, neither party had supplied a copy of this tenancy agreement in evidence. Nevertheless, the Landlord testified that he and the Tenant had reached some sort of agreement to rebate rent to the Tenant if the Tenant left the rental unit early.

The Landlord testified that after the Tenant vacated the rental unit the Landlord noticed issues in the rental unit, such as broken light fixtures, and that the rental unit had been left untidy.

The Landlord claims \$168.00 for steam cleaning the carpets and has provided an invoice for this.

The Landlord further testified that he had to have a cleaning person clean the entire rental unit and in evidence a receipt for \$340.00 was provided.

The Landlord claims \$85.17 for a broken light fixture in the stair well.

The Landlord further claims for a blistered kitchen countertop in the amount of \$1,342.00, which he claims the Tenant damaged but did not repair.

The Landlord also claims for removing and disposing of garbage in the rental unit, garage and yard, in the amount of \$519.75

In support of these claims being the responsibility of the Tenant, the Landlord testified that the letter the Tenant sent him at the outset of the tenancy, requesting repairs, did not list any of the items as deficiencies. The Landlord argued that therefore, the above

items must have been damaged by the Tenant. The Landlord testified he had thought he had sent in a copy of this letter, although none was provided in evidence in the file.

In reply to the Landlord's application, the Tenant denied all of the Landlord's claims.

The Tenant testified that the items the Landlord took to the dump were there already when the Tenant moved in, and alleged there were items left in the garage by previous renters. The Tenant testified he removed all of his belongings at the end of the tenancy.

The Tenant denies he caused any damage to the countertop. He testified there was a small chip in the countertop when he moved in.

The Tenant testified that the broken light fixture was from construction that occurred on the exterior of the building. The Tenant alleged that the pounding on the exterior wall caused this damage.

The Tenant testified he did have the carpet cleaned before he vacated the rental unit; although the Tenant did not supply this in evidence as he did not know it was an issue in the Landlord's claims.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on each of the parties to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement by the other party. Once that has been established, the party must then provide evidence that can verify the value of the loss or damage. Finally it must be

proven that the party did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

#### Tenant's Awards

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit. There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act.

Therefore, I find the Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenant. Here the Landlord did not have any authority under the Act or from the Tenant to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord return to the Tenant double the security deposit, subject to any set off below in the Landlord's claims.

#### Landlord's Awards

I find the Landlord provided insufficient evidence to support the claims made for removing garbage, repair of the kitchen countertop, cleaning the rental unit or for the light fixture.

Absent condition inspection reports or other substantive evidence of the condition of the rental unit at the outset of the tenancy, it is difficult for the Landlord to establish such claims as were made here. Furthermore, there were no photographs taken at the end of the tenancy or other evidence provided to establish the extent of the alleged damages or cleaning required. Therefore, most of the Landlord's claims are dismissed due to insufficient evidence, without leave to reapply.

Nevertheless, I find that Policy Guideline 1 does require that the Tenant have the carpets steam or professionally cleaned after a tenancy of more than one year. I find the Tenant had insufficient evidence to prove that the carpets were cleaned as required under the Policy Guideline.

Therefore, I order that the Tenant pay the Landlord the sum of **\$168.00** in compensation for carpet cleaning.

#### Set Off and Calculation of Monetary Award

I find and order that the Landlord may retain **\$193.00** from the security deposit, comprised of \$168.00 for the carpet cleaning and \$25.00 toward the filing fee for the Application. I have awarded only a portion of the filing fee for the Application due to the partial success of the Landlord.

I find and order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$2,114.00**, comprised of double the remainder of the security deposit ( $\$1,225.00 - \$193 = \$1,032.00$ ) and ( $2 \times \$1,032.00 = \$2,064.00$ ) and the \$50.00 fee for filing this Application.

Conclusion

The parties each were awarded monetary compensation. Following the set off of claims, the Landlord is ordered to pay the Tenant the sum of **\$2,114.00**.

The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: February 4, 2014

---

Residential Tenancy Branch

