



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

**Dispute Codes:** MNSD, MND, FF

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for repairs and cleaning and to justify keeping the security and pet damage deposits in partial satisfaction of the claim.

The application was also to deal with the tenant's claim for the return of double the security deposit not refunded by the landlord within 15 days after receiving the forwarding address. The tenant is also requesting the return of her property now in the possession of the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

### **Preliminary Matter**

The landlord had originally named a second respondent who was a co-tenant. However, it was established that this individual was not served with the Notice of Hearing being that the address was unknown. Accordingly, the style of cause was amended to include only the co-tenant that was properly served and the landlord's monetary claims proceeded only against this tenant.

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

Is the landlord entitled to monetary compensation under section 67 of the *Act* for damages?

Is the tenant entitled to a refund or credit for double the security and pet damage deposit?

Should the landlord be ordered to return the tenant's property?

**Background**

The tenancy began on June 1, 2012 and current rent was \$1,100.00. A security deposit of \$550.00 and pet damage deposit of \$200.00 had been paid at the start of the tenancy. The tenancy ended October 31, 2013.

The tenant testified that the landlord was provided with the tenant's forwarding address at the end of the tenancy but did not refund the deposits. The tenant is claiming monetary compensation of double the security deposit and pet damage deposit.

The tenant testified that the landlord still has 2 bicycles on the premises owned by the tenant. The tenant is seeking to have this property released to her.

The landlord testified that the tenant left the rental unit in a dirty and damaged condition and in the application filed on November 14, 2013 the landlord claimed damages of \$1,598.25. The landlord submitted copies of the move-in and move-out condition inspection reports, signed by the landlord and tenant.

Submitted into evidence by the landlord was a copy of a letter in which the landlord listed the need for cleaning and repairs by item. The landlord acknowledged that some of the damage now being claimed was not originally noted on the move-out inspection report, but notations and amounts were added later, after the tenant had signed the report. The landlord also provided photos, copies of estimates for repair work and invoices.

According to the landlord, the work to be done includes the following:

- Removing, painting and replacing baseboards
- Filling holes in walls and painting
- Replace trim and repaint sliding door
- Treat stained driveway
- Power-wash deck including removal of soffit to access beneath deck
- Remove carpet on landing and seal cement subfloor
- \$160.00 to clean carpets
- \$200.00 for general cleaning
- \$120 for carpet pulls.

The tenant disputed the contents of the move-out condition inspection report and stated that they disagreed with the landlord's claims. Although the tenant's signature and forwarding address were written on the report, the tenant stated that the report had

been altered and some of the landlord's monetary claims were added after-the-fact in the absence of the tenant.

### **Analysis: Landlord's Monetary Claim**

With respect to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants an arbitrator the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage,
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof was on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

In regard to cleaning and repairs, I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. (my emphasis).

Sections 23(3) and 35 of the Act, dealing with move-in and move-out inspections, state that the landlord must complete a condition inspection report in accordance with the regulations. I find that, in this instance, the landlord did attempt to comply with the Act and completed move-in and move-out condition inspection reports which were signed by the parties.

However, I find that, by the landlord's own admission, the move out condition inspection report section was amended in the absence of the tenant. I find that this is an altered

document and therefore, the tenant's signature agreeing to the stated condition and charges holds no evidentiary weight with respect to the landlord's claim.

In addition to the above, I find that the tenant's signature on the bottom of the inspection form stating, *"I agree with the amounts noted above and authorized deduction ....from my security deposit and/or pet damage deposit...."* was dated May 7, 2012.

For the reasons above, I find that the move out condition inspection report has been compromised to the extent that it cannot be relied upon as valid evidence to support the landlord's monetary claim.

Based on the evidence before me, I find that the landlord has not sufficiently met the landlord's burden of proof to justify the compensation being claimed. Accordingly, I find that the application of the landlord must be dismissed.

### **Analysis: Tenant's Claim for Security Deposit & Return of Property**

With respect to the return of the security deposit and pet damage deposit, I find that section 38 of the Act requires that, within 15 days after the tenancy ends and the landlord receives the tenant's forwarding address in writing, the landlord must either: a) repay the security deposit or pet damage deposit to the tenant with interest or; b) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act provides that the landlord can only retain a deposit if, at the end of the tenancy, the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, the landlord has obtained an order through dispute resolution permitting the landlord to retain the deposit to satisfy a monetary claim against the tenant.

I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make application for an order to keep the deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days after the forwarding address has been given, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the deposit.

In the case before me, I find that the landlord did make their application seeking to retain the deposit for damages within the 15-day deadline after the end of the tenancy.

I find that the tenant's security deposit is \$550.00 and the pet damage deposit is \$200.00. I find that the tenant is therefore entitled to a refund of the deposits in the amount of \$750.00.

In regard to the tenant's request that her bicycles be returned, I find that the Act does not permit a landlord to withhold property belonging to a tenant. I find that the landlord is required to allow the tenant access to retrieve her property.

Based on the above, I find that the tenant is entitled to monetary compensation of \$750.00. I hereby issue a monetary order in favour of the tenant for \$750.00. This order must be served on the landlord in accordance with the Act and if necessary can be enforced through Small Claims Court.

#### Conclusion

The landlord is not successful in the application and the monetary claim for damages is dismissed. The tenant is successful and is granted a monetary order for the return of the security deposit and pet damage deposit.

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: February 03, 2014

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Residential Tenancy Branch

