



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MND, MNSD, MNDC, OPB, OPC, FF

### **Introduction**

The hearing was convened to deal with an application by the landlord for a monetary order for damages and to retain the security deposit in partial satisfaction of the claim. The application was also convened to hear a cross application by tenant for the return of the tenant's security deposit.

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. I have considered all of the affirmed testimony and relevant evidence that was properly served on the other party and submitted to the file at the Residential Tenancy Branch at least 5 days in advance of the hearing pursuant to the Act. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing.

### **Issues to be Decided for the Tenant's Application**

- Whether the tenant is entitled to a refund of double the security deposit paid.

### **Issues to be Decided for the Landlord's Application.**

- Whether the landlord is entitled to compensation under section 67 of the *Act* for loss of rent and damages.

### **Preliminary Matter**

#### **Order of Possession**

Although the landlord's cross application indicated that they seek an Order of Possession, it was established that the tenant had vacated in August 2013. Therefore the matter of possession has been resolved and this hearing will only proceed to in regard to the monetary claims.

### Respondent's Evidence

The landlord submitted evidence to Residential Tenancy Branch that was placed in the file. The landlord testified that this evidence was emailed to the tenant and the landlord also faxed it to a location where the tenant could retrieve the evidence.

Section 88 of the Act requires that all documents, other than those referred to in section 89 [*special rules for certain documents*], must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

In this instance, I find that the evidentiary material submitted by the landlord was not successfully served on the tenant in accordance with the Act. Although the evidence was not considered, the landlord was permitted to provide verbal testimony with respect to the details of the monetary claims.

### **Background and Evidence**

The tenancy began in September 2008 and ended in August 2013. The monthly rent was \$1,050.00 and a security deposit of \$500.00 was paid.

The tenant testified that they gave the landlord their written forwarding address by email and by registered mail. The tenant provided the Canada Post tracking number which confirmed that the landlord received the delivery on October 7, 2013. The tenant stated that the landlord did not refund the deposit within 15 days and the tenant is claiming a refund of double the security deposit in the amount of \$1,000.00.

The landlord testified that they are seeking monetary compensation in the amount of \$2,000.00 because the rental unit was not left reasonably clean and in good repair at the end of the tenancy. The landlord is claiming compensation of \$2,000.00 for damage to appliances, walls, carpet, smoke damage and odour, staining of walls, returned cheque costs, unpermitted use of storage lockers, missing items and strata fines.

No copies of the tenancy agreement, strata bylaws, move-in and move-out condition inspection reports, invoices, estimates or receipts were in evidence. However, the landlord had submitted photos

However, the landlord submitted photos showing the damaged areas of the suite.

The tenant is disputing all of the landlord's monetary claims listed above.

### **Analysis – Tenant's Claim for Return of Security Deposit**

In regard to the return of the security deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day 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 make an application for dispute resolution to claim against the security deposit.

With respect to the return of the tenant's security deposit, I find that the Act states that the landlord can only retain a deposit if the tenant agrees to this in writing at the end of the tenancy. If the permission is not in written form and signed by the tenant, then the landlord has no right to keep the deposit.

I find that the tenant did not give the landlord written permission to keep the deposit.

A landlord may keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord makes an application for dispute resolution and successfully obtains a monetary order to retain the amount from

the deposit to compensate the landlord for proven damages or losses caused by the tenant.

However, the landlord must either make the application for dispute resolution or refund the security deposit within 15 days after the tenancy had ended and the receipt of a written forwarding address.

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, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In this instance I find that the landlord had received the tenant's written forwarding address by October 7, 2013. I find that the landlord did not return the security deposit nor make the application for dispute resolution within 15 days of receiving the tenant's forwarding address, as the landlord's application was filed on November 7, 2013.

Accordingly, I find that the tenant is entitled to receive a credit or refund of double the \$500.00 security deposit in the amount of \$1,000.00.

### **Analysis – Landlord's Application**

With respect to a monetary claim for damages and loss, it is important that the evidence furnished by each applicant/claimant 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, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

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.

To determine whether or not the tenant had complied with this requirement, I find that this can best be established by comparing the unit's condition as it was when the tenancy began with the final condition of the unit after the tenancy ends. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures.

Completing move-in and move out condition inspection reports is a requirement under the Act under sections 23(3) and section 35. The Act places the obligation on the landlord to complete the condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, neither a move-in condition inspection report nor move-out condition inspection report was completed. I find the landlord's failure to comply with the Act, and the absence of these reports, has hindered the landlord's ability to prove that the tenant caused the damage and should be held accountable for the costs of cleaning or repairs.

The landlord has offered verbal testimony in regard to the extent of the cleaning and repairs. The tenant is disputing the claims and stated that the rental unit was merely subject to normal wear and tear. The tenant stated that the rental unit was left reasonably clean, but did acknowledge that the carpets were not shampooed at the end of the tenancy.

Due to insufficient evidence from the landlord and the lack of the move-in and move-out condition inspection reports, I find that I am unable to determine what damage had actually occurred during the tenancy, beyond expected wear and tear, through the actions of the tenant. I therefore find that the landlord's monetary claims fail to meet elements 2 of the above test for damages.

In addition to the above, I find that the landlord did not furnish sufficient proof of the claimed expenditures. I therefore find that the landlord's monetary claims also failed to satisfy element 3 of the test for damages.

I find that, with the exception of carpet-cleaning costs, all of the landlord's monetary claims are not sufficiently proven and must be dismissed.

In regard to carpet cleaning, I find that according to Residential Tenancy Guidelines, the tenant should steam-clean or shampoo the carpets at the end of the tenancy, if it exceeds one year.

Therefore, I hereby grant the landlord compensation of \$200.00 in damages for the tenant's failure to leave the carpets reasonably clean.

I find that the total compensation owed to the tenant is \$1,000.00 and the total amount of compensation proven to be owed to the landlord is \$200.00.

In setting off the two monetary awards, I find that, after deducting the compensation of \$200.00 to the landlord, the remainder to which the tenant is entitled is \$800.00.

I hereby grant the tenant a monetary order in the amount of \$800.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Each party is responsible for their own filing costs and the remainder of the landlord's application is dismissed without leave.

### **Conclusion**

Both the tenant and the landlord are partly successful in the cross applications and the tenant is granted a monetary order for the refund of double the security deposit minus damages owed to the landlord.

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 12, 2014

---

Residential Tenancy Branch

