



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch in advance of this hearing. The tenant stated that he had not received documentary evidence from the landlord prior to the hearing. The parties were given the opportunity to request an adjournment of the proceedings to allow the landlord to re-serve evidence to the tenant. However, the tenant agreed to accept the landlord's documentary evidence into the hearing and the parties requested the hearing continue. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit?
- Is the landlord permitted to keep the security and pet deposit?

Background and Evidence

The parties agree that this month to month tenancy started on December 01, 2012. Rent for this unit was \$850.00 and was due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$425.00 and a pet deposit of \$425.00 at the start of the tenancy.

The landlord's agent testifies that they did not do a move in inspection report at the start of the tenancy as the unit had been newly renovated prior to the tenant taking possession of the unit. The landlord testifies that they did not do a move out inspection of the unit at the end of the tenancy.

The landlord's agent testifies that the tenant gave written notice to end the tenancy on June 01, 2013 which was effective on June 30, 2013. The landlord's agent testifies that the tenant did not move out on that day but the landlord does not know exactly which day the tenant did vacate the unit. The landlord's agent testifies that after the tenant moved out the landlord found a hole in the balcony floor, some areas of the bedroom wall had pink marks on them, there was a hole in the wall behind the bathroom door and the tenant had not cleaned the carpets which were left full of cat hair and had a black stain.

The landlord's agent has provided an invoice from the person who repaired the balcony, the bathroom wall and repainted three walls in the bedroom. This invoice shows costs for materials of \$586.00, labour costs to repaint the walls and repair the bathroom wall and doorknob of \$90.00, labour to repair the balcony of \$310.00 and \$160.00 to clean the carpets. This invoice also shows GST charges of \$80.22.

The landlord seeks to apply the security and pet deposits of \$850.00 to the repair and cleaning costs. The landlord also seeks a Monetary Order for the balance of costs incurred and seeks to recover the \$50.00 filing fee.

The tenant disputes the landlord's claim. The tenant testifies that the hole in the balcony was not caused by the tenant but was in place at the start of the tenancy and had been

covered up with a carpet. The tenant testifies that the unit did not appear to have been newly renovated prior to his tenancy as the bedroom walls had pink marks on them which the tenant believes came from the previous tenant's bed. The tenant agrees that the hole in the bathroom wall occurred during the tenancy but was caused by the doorknob because the landlord had not fitted door stops.

The tenant testifies that he did not agree either verbally or in writing that the landlord could retain all or part of the security or pet deposits and tried to recover these from the landlord by sending a letter with a forwarding address in it on August 26, 2013. The tenant testifies that he did give the landlord his forwarding address previously in his letter giving notice on June 01, 2013. The tenant seeks to recover double the security and pet deposit as the landlord has not returned them within 15 days.

The landlord's agent testifies that the landlord's grandmother was hospitalized after the tenancy ended and she has since passed away. The landlord could not therefore file his application to keep the deposits within the time frame.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for damages; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The landlord has provided some photographic evidence showing a hole in the balcony some marks on a wall and a hole in a wall behind a door. However the tenant disputes the landlords claim. The landlord has testified that the unit was newly renovated and the tenant disputes this and testifies that the balcony and walls were damaged prior to his tenancy commencing. The landlord failed to conduct a move in inspection report with the tenant at the start of the tenancy. The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

I find there is insufficient evidence to show that the tenant was responsible through their actions or neglect for the hole in the balcony and the pink marks on the bedroom walls. Consequently, this section of the landlord's claim must be dismissed. The tenant agrees that the bathroom wall was damaged during the tenancy but disagrees that it happened through the tenants actions or neglect but rather because the landlord had not fitted a door stop. Consequently, without further corroborating evidence I find this section of the landlord's claim is dismissed.

The tenant did not dispute the landlord's claim for carpet cleaning and therefore I uphold the landlords claim for **\$160.00 plus \$19.20 GST**.

With regard to the landlord's claim to keep the security and pet deposit; section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security and pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security and pet deposit to the tenant.

Sections 23(4) of the *Act* requires a landlord to complete a condition inspection report at the beginning of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In failing to complete the condition inspection report when the tenant moved in, I find the landlord contravened s. 23(4) of the *Act*. Consequently, s. 24(2)(a) of the *Act* says that the landlord's right to claim against the security and pet deposit for damages is extinguished.

When a landlord's right to claim against the security and pet deposit has been extinguished a landlord is not entitled to file a claim to keep the security and pet deposit and if the deposits have not been returned to the tenant within 15 days of either the end of the tenancy or the date the tenant gave the landlord their forwarding address in writing the landlord must pay double the security and pet deposit to the tenants.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on June 01, 2013 and the tenancy ended on June 30, 2013. As a result, the landlord had until July 15, 2013 to return the tenant's security and pet deposit. While I sympathize with the landlord's loss of his grandmother there is no provision under the *Act* for a landlord not to comply with the *Act* by withholding the security or pet deposits due to the hospitalization of a family member. As the landlord failed to return the deposits, the tenant is entitled to recover double the security and pet deposit to an amount of **\$1,700.00**, pursuant to section 38(6)(b) of the

*Act.* There has been no accrued interest on the security deposit for the term of the tenancy.

As the landlord has been partially successful with this claim for carpet cleaning I have offset this portion of the landlords claim for **\$179.20** against the tenant's monetary award.

As the landlord has been largely unsuccessful with their claim I find the landlord must bear the cost of filing their own application.

#### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to **\$179.20**. This amount has been offset against the tenant's monetary award.

A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,520.80**. The Order must be served on the landlord. Should the landlord fail to comply with the Order, the Order may be enforced through the Provincial Court as an order of that Court.

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 23, 2013

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Residential Tenancy Branch

