



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord – OPR, MNR, MNDC, FF

For the tenant – MNSD, FF

### Introduction

This decision deals with two applications for dispute resolution, one brought by the landlord and one brought by the tenant. Both files were heard together. The landlord has applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant has applied to recover double the security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant, the landlord and the 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 and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

At the outset of the hearing the parties advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a Monetary Order for the return of double the security deposit?

Background and Evidence

The parties agree that this tenancy started on June 01, 2009 and ended on October 19, 2013. Rent for this unit was \$1,200.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$600.00 on May 20, 2009. The parties also agree that the landlord did not conduct move in or move out inspections at the start and end of the tenancy. The tenant gave the landlord their forwarding address in writing on September 27, 2013.

The landlord testifies that he served the tenant with a Two Month Notice to End Tenancy because he did not have a one Month Notice to serve on the tenant. The tenant stopped her rent cheque for October, 2013 and gave the landlord Notice that she was ending the tenancy. The landlord seeks to recover the unpaid rent for October, 2013 of \$1,200.00.

The landlord testifies that he has applied to recover the cost for the damages in the unit. The landlord testifies that the tenant did not clean the carpets and the living room carpets were ruined by the tenant's cat and could not be saved. The landlord seeks to recover \$302.00 to replace the living room carpet and \$150.00 for carpet cleaning. The landlord testifies that the carpets were new in 2007.

The landlord testifies that the tenant left the stove in such a dirty condition it looked as if it had never been cleaned. The landlord testifies that he had to replace the stove at a cost of \$120.00.

The landlord testifies that the tenant left a large amount of garbage at the unit. The landlord had to take three loads of garbage to the dump and a friend did this work for the landlord and charged the landlord \$65.00. The landlord testifies that the garbage and junk was left both in the unit and in the yard.

The landlord testifies that the tenant did not clean the unit at the end of the tenancy. The landlord testifies that he is still doing the cleaning but is not charging the tenant for this work.

The landlord testifies that the tenant painted walls in the unit, red, black and yellow without the landlord's permission. The tenant did tell the landlord that she would restore the original colour when she moved from the unit but failed to do so. The landlord testifies that he spent \$140.00 on paint and used some other paint stored in the unit. The landlord seeks to recover the cost for the paint purchased of \$140.00.

The tenant testifies that when she received the Two Month Notice to end Tenancy it was dated October 10, 2013 and had an effective date of October 10, 2013. The tenant acted in good faith that this was a legal notice and gave the landlord notice to vacate the unit. The tenant testifies that she was therefore entitled to an amount equivalent to one month's rent in compensation and so stopped her rent cheque for October and moved out on October 19, 2013.

The tenant testifies that they returned to the unit on October 20, 2013 to meet the landlord and the landlord told them that everything looks fine. They made arrangements with the landlord at that time to return a week later to collect the remainder of their belongings in the unit and yard.

The tenant testifies that as the landlord said the unit looked fine they did not have the carpets shampooed. However, the carpets were filthy at the start of the tenancy and so the landlord had to have them cleaned after the tenants had moved in. The tenant testifies that the carpets were also ripped and stained at the start of the tenancy. The tenant agrees that her cat may have torn the carpet a little more in the same area they were already damaged.

The tenant testifies that the stove was old at the start of the tenancy and two of the four burners did not work. A neighbour gave the tenants one replacement burner and the stove also had a broken switch which made it difficult to turn on and off. The tenant testifies that the stove was at least 30 years old.

The tenant testifies that her photographic evidence shows how clean they left the yard. The tenant refers to the landlords photographs which show items in the yard such as pallets and a barbeque. The tenant queries when the landlord took his photographs as these items are all now at the tenant's new home. The tenant testifies that the only thing left in the yard was a wicker shelving unit. The pile of metal was collected by a metal man. The tenant disputes the landlords claim for garbage removal and testifies that the landlord had items in the unit at the start of the tenancy which the tenants left in the unit when they moved out ;such as two television sets, some garbage in a closet and two big boxes of toys. The garage was also full of items that were the landlords. The tenant testifies that they rented a dumpster a week before they moved out and any of their garbage was put in that. The tenant has provided a photograph of the dumpster in evidence.

The landlord testifies that his photographs were taken on the day the tenants moved out.

The tenant testifies that the landlord had told the tenants that they could do what they wanted in the unit. When they moved in the walls were white however there was mould in the house so the paint people advised the tenant to paint the walls with a shiny paint

in a dark colour to hide the mould. The tenant testifies that the unit was in a poor condition decoration wise. The window frames were rotten, there were burnt out electrical outlets and other bad wiring issues. The tenant has provided photographic evidence of these items. The tenant testifies that there was a ceiling fan which smoked when it was turned on. The landlord replaced that with an old poach light

The landlord testifies that the house was old but in good shape and the wiring was safe.

The tenant testifies that they cleaned the unit at the end of the tenancy. The only thing they left was the kitchen floor. The house was not clean at the start of the tenancy and there was also a mouse problem.

The landlord testifies that the house was spotless when the tenants moved in. The tenant never cleaned the house.

The tenant testifies that the landlord did not return the tenants security deposit within 15 days of receiving their forwarding address in writing. The tenant testifies that they have never given the landlord written permission to keep the security deposit. The tenant therefore seeks to recover double the security deposit to the sum of \$1,200.00.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for unpaid rent for October, 2013. I refer the parties to s. 51 (1) of the *Act* which states:

**51 (1)** *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

*(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.*

The landlord claims that he only gave the tenant the Two Month Notice for landlord's use of the property because he did not have a one Months Notice. However a Notice is a legal document and therefore the landlord must ensure the correct Notice is provided to a tenant. The landlord has issued and served the tenant with the Two Month Notice and the tenant acted in good faith by accepting that Notice and vacating the unit after the tenant then gave written Notice to the landlord to end the tenancy. The tenant was therefore entitled to withhold her last month's rent as compensation for this Notice pursuant to s. 51 of the *Act* as shown above. This section of the landlord's claim is therefore dismissed.

With regard to the landlords claim for damages and cleaning; 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.

When one person's evidence contradicts the other then the person making the claim has the burden of proof to show that these damages occurred during the tenancy. The landlord has provided no corroborating evidence to show that the tenant was responsible for damage to the carpet sufficient enough to warrant the entire carpet being replaced as the tenant has testified that the carpet was already torn at the start of the tenancy. The landlord has not shown that the stove was not cleaned, that the carpets were left unclean, that the unit was left unclean or that the tenant left a significant amount of garbage at the unit after the following week the tenant claims they had arranged with the landlord. Consequently, the landlord has not met the burden of proof in these matters. Furthermore the landlord has provided no evidence such as invoices or receipts to show the costs incurred to replace the stove, remove the garbage or for the paint purchased to repaint the unit. The only invoice provided is for the replacement carpet. Consequently, the landlord has failed to meet the test for damage or loss and the landlord's claim is dismissed.

With regard to the tenant's claim to recover double the security 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 tenant's forwarding address in writing to either return the security 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 deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Sections 23(4), 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the

tenants moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(a) and s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished. The landlord would have still be entitled to file a claim to keep the security deposit for unpaid rent however the landlord has not filed a claim to keep the security deposit and it has been established that there was no outstanding rent due to the landlord for October.

When a landlord's right to claim against the security deposit has been extinguished the landlord must return the security deposit within 15 days of either the end of the tenancy or the date the tenant give the landlord their forwarding address in writing or the landlord must pay double the security deposit to the tenant.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on September 27, 2013 and the tenancy ended on October 19, 2013. As a result, the landlord had until November 03, 2013 to return the tenant's security deposit. As the landlord failed to do so, the tenant has established a claim for the return of double the security deposit to an amount of **\$1,200.00**, 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 tenant has been successful with this claim I find the tenant is entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*.

### Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for double the security deposit and the filing fee to an amount of **\$1,250.00**. The Order must be served on the respondent. Should



the respondent 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 02, 2013

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Residential Tenancy Branch

