



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord – OPB, MND, MNR, MNSD, FF

For the tenant – MNSD, FF, O

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an Order of Possession because the tenant breached an agreement with the landlord; for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order to recover double the security deposit, other issues and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord 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 landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession. The landlord also withdraws his application for a Monetary Order for unpaid rent or utilities.

### Preliminary Issues

The tenant had made an error on her application with the dispute address and the landlords address. The tenant had inadvertently put the dispute address as the upper unit and the landlords address as the lower unit. The parties agree that in fact the landlord lived in the upper unit and the rental unit was the lower unit. The parties did not raise any objections to this error being corrected.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep the security deposit?
- Is the tenant entitled to a Monetary Order to recover double the security deposit?

### Background and Evidence

The parties agree that this tenancy started on October 25, 2013 for a month to month tenancy. Rent for this unit was \$1,000.00 per month which was due on the first day of each month. The tenant paid a security deposit of \$475.00 on November 01, 2013. The tenancy ended on December 31, 2013.

The landlord testifies that there were two attempts to conduct the move out inspection of the property after the tenant vacated the unit. The landlord testifies he arranged to meet the tenant in the first few days of January, 2014. On that first inspection it was the first time the landlord had been inside the unit. The tenant became upset and angry and left without the inspection being completed. The landlord testifies that he took photographs of the unit at that time.

The landlord testifies that he arranged to do the inspection again with the tenant on January 15, 2014. However as the landlord needed to show the unit to prospective tenants in order to re-rent the unit the landlord did have to go into the unit to do some cleaning and then completed the inspection report in the tenants absence. When the landlord met with the tenant on January 15, 2014 the tenant again became upset when the landlord started to go over his findings with the tenant and the tenant then left the inspection again.

The landlord testifies that the tenant did not leave the rental unit in a reasonably clean condition. The landlord had heard the tenant and another female in the unit cleaning for around 40 minutes before they left at the end of December. The landlord testifies that at that time he did hear the vacuum being used for the first time during this tenancy. The landlord testifies that he found some of the tenant's personal effects in the unit which shows that a thorough clean up was not done. The landlord refers to his photographic evidence that shows the bathroom counter with drip marks running down the cupboard, the toilet had some sort of brown scum left in it, there was an abundance of cat fur on the computer chair from the tenant's cat, there was dirt or sand left in a dresser drawer; there was food and garbage left under the bed. The kitchen sink had been cleaned however the landlord shows how dirty the sink was after the landlord had too wash the floors which were left dirty and stained.

The landlord testifies that the carpets had food and dirt on them and these had been professionally cleaned prior to this tenancy, there was what appears to be a semen stain on the bedroom wall next to the nightstand which cannot be fully removed, the tenant had not cleaned under the couch as a note was found there; the vent in the back of the fridge was clogged with cat hair and the fridge is on wheels and can be easily moved, there was a large stain on a wall which is greasy in nature and prevents new paint being applied. The mattress came with a mattress protector which the tenant assured the landlord that it was being used during the tenancy. The landlord found this balled up on the closet floor and the mattress had blood spots on it. There were cigarette burns on the patio and numerous butts were found littering the outside area.

The butt can which was in place outside the door has been removed. The leather couch has a long scratch and several cat claw holes are evident on the couch and a chair.

The landlord testifies that he obtained a quote from a cleaning company and was advised that they would charge \$80.00 an hour for two cleaners for two hours work to clean the unit. The landlord testifies that he did the work himself which took four hours and the landlord seeks to recover \$45.00 an hour to the amount of \$180.00. the landlord seeks an Order to keep this from the security deposit the landlord also seeks to keep \$237.00 from the security deposit for compensation for the cat damage to the couch and chair.

The tenant disputes the landlord's claims. The tenant testifies that when she went to the unit on January 07, 2014 the landlord had already filled in the condition inspection report. The tenant testifies that she informed the landlord that he is supposed to do the inspection with the tenant. The tenant agrees she met with the landlord a second time on January 15, 2014. The tenant testifies that she did clean the rental unit thoroughly and it was 15 days from the end of the tenancy to the date they met for the second time to do the inspection report. The tenant alleges that during this time the unit could have become dirty again as the doors were opened and closed and this could cause cat fur to blow into the unit.

The tenant refers to her photographic evidence showing areas of the unit left clean. The tenant particularly refers to her picture of the toilet showing that this was clean at the end of her tenancy. The tenant disputes that her cat did any damage to the couch and chair and states these marks must have been there at the start of her tenancy. The tenant testifies that she and a helper had cleaned the floors. The tenant disputes the landlords claim that there was semen left on the bedroom wall. The tenant testifies that this was in fact vomit. The tenant disputes that she stained the mattress with blood and testifies that the other stain on the wall was caused by a cleaning product the tenant used on the wall which was too abrasive for the wall.

The landlord testifies that the stain on the bedroom wall could be vomit however whatever the cause it shows that the tenant did not clean this staining prior to leaving the unit. The landlord testifies that the other stain was not caused by an abrasive cleaning product as the paint is intact and the stain is grease like substance.

The tenant seeks to recover double the security deposit as the landlord did not comply with the *Residential Tenancy Act (Act)* with regards to the move out condition inspection and has not returned the deposit within 15 days. The tenant testifies that she gave the landlord her forwarding address in writing on January 07, 2014 on a piece of paper.

The landlord disputes the tenants claim for double the security deposit. The landlord testifies that he has not received the tenants forwarding address in writing and was only sent it in a text message on January 07, 2014 at 3.27 p.m.

### Analysis

I have carefully considered all the relevant evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for cleaning and damages; I refer the parties to s. 32(2) and s. 32(3) of the *Act* which states:

*(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

*(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

Having considered the evidence before me I find the landlord met his obligations to do a move out inspection with the tenant. The parties met to complete the inspection report on the prearranged date and the tenant left that inspection before it was completed. The

landlord could have then gone on and completed the inspection in the tenant's absence; however the landlord gave the tenant a second opportunity to view the unit. By this time the landlord had already completed the inspection report as he is required to do in the tenant's absence. The tenant agrees she did not take part in the inspection as the landlord had already filled in the report in her absence.

A landlord is only required to provide two opportunities for inspection if the tenant cannot make the first time and date given. The landlord is not required to meet with the tenant again if the tenant walks out of an inspection before it is completed.

Consequently I find the inspection report provided by the landlord is viewed for the purposes of determining any cleaning or damages to be relevant and lawfully completed.

With this in mind I have considered the landlord's photographic evidence against that of the tenants. The tenant's photograph of the toilet shows that this was clean on December 31, 2013. The landlord photograph of the same toilet shows it with staining a few days later. The remainder of the tenant's photographs are of areas of the unit which are not under dispute by the landlord. However the remainder of the landlord's photos do show that areas of the unit were not clean and were damaged by the tenant's cat.

Consequently I am satisfied from the evidence before me that the landlord had to spend time cleaning the unit in order to mitigate a loss of rent and that the couch and chair were damaged by the tenant's cat. However the landlord has charged an hourly rate for cleaning that is \$5.00 more an hour then that charged by professional cleaners. I find the landlord's claim of \$45.00 an hour to therefore be excessive and I limit this claim to \$25.00 per hour for four hours to a total amount of **\$100.00**. I do however award the landlord an extra amount for dealing with the staining to the walls of **\$50.00**.

I find that the landlord is entitled to compensation of **\$237.00** for damage to the couch and chair. There is no evidence to support the tenant's claim that this damage was in place prior to her tenancy; however, there is evidence to support the landlords claim

that the couch and chair are scratched and have cat claw marks at the end of the tenancy.

I further find the landlord is entitled to recover the **\$50.00** filing fee for this application pursuant to s. 72(1) of the *Act*.

I find the landlord is entitled to deduct the amount of **\$437.00** from the security deposit pursuant to s. 38(4)(b) of the *Act*.

With regard to the tenants claim to recover double the security deposit; A tenant is required to provide a forwarding address in writing. This does not include text messages or emails which are not an approved method of providing a forwarding address under the *Act*. The tenant testifies that she did provide a forwarding address on a piece of paper but the landlord contradicts this. The tenant has the burden of proof that a forwarding address in writing was provided and the tenant has not met the burden of proof in this matter.

In any event even if I was to accept that a forwarding address in writing had been provided to the landlord the landlord did apply to keep the security deposit within the time frame and therefore no doubling provision of the security deposit could be awarded to the tenant.

As I have ordered the landlord to retain \$437.00 from the security deposit, the tenant is entitled to recover the balance of the security deposit of \$38.00. As the tenant has been largely unsuccessful with her claim I find the tenant must bear the cost of filing her own application.

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. I Order the landlord to deduct **\$437.00** from the security deposit.

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$38.00**. 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: March 11, 2014

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Residential Tenancy Branch



