



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Brookmere Gardens Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF  
                                 MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning applications filed by the landlord and by the tenant. The landlord has applied for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord. The tenant's application specifies a claim for double the amount.

An agent for the landlord company and the tenant both attended the hearing and each gave affirmed testimony. The tenant also called one witness who gave affirmed testimony. The parties provided evidentiary material to the Residential Tenancy Branch and to each other and were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

- Has the tenant established a monetary claim as against the landlord for all or part or double the amount of the pet damage deposit or security deposit?

### Background and Evidence

The tenant testified that this fixed term tenancy began on August 1, 2011 and expired on October 31, 2011 after which time the parties agreed to a month-to-month tenancy. The tenancy ended February 15, 2014 with a mutual agreement in writing by the parties. Copies of the tenancy agreement and the mutual agreement to end the tenancy have been provided.

Rent in the amount of \$920.00 per month was originally payable under the tenancy agreement, which was increased during the tenancy and at the end of the tenancy the tenant was paying \$965.00 per month. The tenant paid rent for the first half of February, 2014. On June 8, 2011 the landlord collected a security deposit from the tenant in the amount of \$460.00.

The parties conducted a move-in condition inspection at the outset of the tenancy and the landlord gave the tenant a copy of the report. The same form was used for the move-out condition inspection report and the tenant provided a forwarding address in writing on that form. A copy of the form has been provided and it is signed by both parties and is dated February 15, 2014. The form shows that the tenant agreed to deductions from the security deposit in the amount of \$115.00 for carpet cleaning and \$7.50 for cleaning. The tenant testified that the landlord told the tenant that the tenant had an obligation to pay those amounts, so the tenant agreed and signed the form. On March 10, 2014 the tenant received a cheque from the landlord in the amount of \$195.00 with a document entitled Security Deposit Statement, and a copy has been provided. The document shows that deductions of \$7.50 for cleaning, \$157.50 for carpet cleaning, and \$100.00 for damage to carpet were applied to the security deposit held by the landlord, and that the balance due to the tenant was \$195.00. The document is dated February 26, 2014 and signed by a landlord but not by a tenant.

The tenant further testified that the washing machine in the rental unit above leaked, and the tenant told the landlord's agents on 2 occasions. The tenant could hear water in the walls and the cycles in the washer. The landlord's agents told the tenant that they couldn't do anything about it. At the outset of the tenancy, however, the tenant was told that no washers or dishwashers were permitted in any of the rental units.

The tenant also testified that the carpet in the rental unit was old with threadbare and an odor was noticed during the move-in condition inspection but was not mentioned in the report because there is no place on the form to record odors.

The tenant also testified that the rental unit was re-rented prior to March 1, 2014 as evidenced by the landlord's documentation which includes an email from the new tenant dated March 10, 2014 stating that she had been there for a few weeks.

The tenant had no pets during the tenancy.

The tenant claims \$920.00 as against the landlord, being double the amount of the security deposit.

The tenant's witness testified that he lived with the tenant on a part-time basis and also had another primary residence. The witness testified that the landlord returned \$195.00 of the security deposit to the tenant after the landlord was served with the Tenant's Application for Dispute Resolution.

The landlord's agent testified that the move-out condition inspection report with the security deposit deductions was prepared in the presence of the tenant. The tenant agreed to the deductions for cleaning and carpet cleaning. The landlord's agent spoke with the tenant after she had moved out and the tenant verbally agreed to the higher amount for carpet cleaning. The smell on the carpet was human urine which required a higher amount for treatment and a copy of the receipt for \$157.50 has been provided. The landlord's agent didn't notice the odor during the move-out condition inspection report because the windows were open, however an inspection was conducted during the tenancy at which time the landlord's agent did notice the urine smell but didn't say anything to the tenant. As it turned out, the sub-floor, underlay, and carpet for the hall and the bedroom had to be replaced. When the landlord's agent sent the cheque for \$195.00 to the tenant it was accompanied by a statement showing that the landlord was only charging the tenant \$100.00 for the floor, and the landlord's agent testified that it seemed like a fair amount. Copies of invoices have been provided for bedroom carpeting in the amount of \$608.34 and \$591.99 for a hallway and an entry hall.

The landlord's agent also testified that the tenancy agreement specifies that rent is payable on the first day of each month, and the tenant only paid half a month's rent for February, 2014. The landlord's agent stated that that signing a mutual agreement to end a tenancy didn't mean the tenant didn't have to pay rent.

The landlord's agent further testified that the tenant was sent a cheque in the amount of \$195.00 on February 26, 2014 by regular mail, but the address on the move-out condition inspection report was missing a unit number which is likely why it took so long to reach the tenant.

The landlord claims half a month's rent in the amount of \$482.50, \$1,200.33 for the flooring and recovery of the \$50.00 filing fee, for a total of \$1,732.83.

### Analysis

Firstly, with respect to the landlord's claim for a monetary order for unpaid rent, I have reviewed the Mutual Agreement to End Tenancy and it is clear that the parties agreed in writing that the tenancy ends on February 15, 2014 at 1:00 p.m. Although I agree with the landlord that rent was payable on the 1<sup>st</sup> day of each month, the mutual agreement

stands to end the tenancy effective on the date that the parties agreed to. The document specifies: "The parties recognize that the tenancy agreement between them will legally terminate and Come to an End at this time." I find that the landlord has failed to establish that the tenant should pay rent after the tenancy ended, and the landlord's application is dismissed.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

Further, I must be satisfied that any award for damages doesn't place the claiming party in a better financial position than the party would be if the damage or loss hadn't occurred.

In this case, the landlord claims flooring and has provided invoices and an email from a new tenant to confirm the damage. The regulations to the *Residential Tenancy Act* specify that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit. The tenant testified that the unit smelled at the time of move-in but there was no place to record that on the report. The landlord's agent testified that she smelled it at the time of an inspection during the tenancy but not at move-out because the windows were open. It doesn't appear that either party mentioned it to the other, however where there is a dispute, the onus is on the claiming party to establish the claim. I find that the landlord has failed to establish elements 1 and 2 in the test for damages, and I dismiss the claim.

With respect to the security deposit, the *Act* requires a landlord to return all of it to the tenant, less any amount agreed by the tenant, within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do so, the landlord must be ordered to pay the tenant double. In this case, I am satisfied that the tenant agreed in writing that the landlord could keep \$122.50 but the landlord kept \$265.00. I find that the landlord has not complied with the *Act*, and I order that the landlord pay to the tenant \$480.00, calculated as follows:

|               |          |                            |
|---------------|----------|----------------------------|
|               | \$460.00 | amount of security deposit |
| Less          | \$122.50 | agreed by tenant           |
| Equals        | \$337.50 |                            |
| Multiplied by | 2        |                            |
| Equals        | \$675.00 |                            |
| Less          | \$195.00 | returned to tenant         |
| Equals        | \$480.00 |                            |

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$530.00.

This order is final and binding and may be enforced.

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: June 24, 2014

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Residential Tenancy Branch

