



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord's amended application was for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that he received a copy of the landlord's dispute resolution hearing package sent by registered mail in early February 2014, and a copy of the landlord's written evidence package in May 2014. The landlord confirmed that she received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on March 1, 2014. She also said that she received copies of the tenant's written evidence. I am satisfied that the parties served one another with the above documents in accordance with sections 88 and 89 of the *Act*.

### Issues(s) to be Decided

Are either of the parties entitled to monetary awards for losses or damages arising out of this tenancy? Which of the parties are entitled to the tenant's security deposit? Are either of the parties entitled to recover their filing fees for their applications from one another?

### Background and Evidence

On June 15, 2013, the parties signed a one-year fixed term Residential Tenancy Agreement (the Agreement). According to the terms of the Agreement, the tenancy was to run from July 7, 2013 until June 30, 2014. Monthly rent was set at \$1,350.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$675.00 security deposit paid on June 15, 2013.

On December 28, 2013, the tenant sent an email to the landlord advising her that he was planning to vacate the rental unit by the end of January 2014. The landlord confirmed that she received this notice from the tenant to end his tenancy early.

The parties provided conflicting evidence with respect to whether a joint move-in condition inspection occurred and whether copies of the reports of either the move-in or joint move-out condition inspection were provided to the tenant. The tenant testified that no joint move-in condition inspection happened. The landlord said that a joint move-in inspection occurred and that a report of that inspection was prepared and provided to the tenant. Both parties agreed that they participated in a joint move-out condition inspection on February 1, 2014, at which time the tenant returned his keys to the landlord. The tenant said that no joint move-out condition inspection report was provided to him. The landlord said that she did prepare a report, a copy of which she provided to the tenant. Neither party entered into written evidence a copy of any condition inspection report for this tenancy.

The landlord's amended application for a monetary award of \$1,670.00 included the following:

<b>Item</b>	<b>Amount</b>
Unpaid February 2014 Rent	\$1,350.00
Carpet Cleaning	170.00
Recovery of Tenant's Unpaid Move Out Fee Paid by the Landlord to the Strata Corporation	150.00
<b>Total Monetary Order Requested</b>	<b>\$1,670.00</b>

The landlord entered undisputed evidence that she was unable to re-rent the rental unit to another tenant until March 1, 2014, after the tenant vacated on February 1, 2014. She entered into written evidence a copy of the Agreement she signed with new tenants on February 12, 2014 for a new one year tenancy. This new Agreement enables the landlord to obtain \$1,380.00 in monthly rent until February 28, 2015. She also

maintained that the tenant did not properly clean the carpet, requiring her to retain a professional carpet cleaning service, which charged her \$170.00 to perform this task.

The tenant's application for a monetary award of \$1,080.00 included the following:

Item	Amount
Recovery of Move In Fee	\$150.00
Recovery of Move Out Fee	150.00
Repair Faucet	105.00
Return of Security Deposit	675.00
<b>Total Monetary Order Requested</b>	<b>\$1,080.00</b>

The tenant maintained that the landlord had agreed to equally share his \$150.00 move-in and move-out fees for his tenancy. He said that when the landlord did not pay him for her share of the \$150.00 move-in fee he paid to the strata corporation he did not pay the \$150.00 move-out fee charged by the strata. At the hearing, the tenant did not dispute the landlord's claim that she had to pay the strata's \$150.00 move-out fee. The tenant entered written evidence in the form of emails exchanged with the landlord in which the landlord confirmed that the carpets were stained at the beginning of this tenancy. He also gave undisputed sworn testimony that the carpets were dirty and in poor condition when his tenancy began.

Both parties agreed that the tenant gave the landlord his forwarding address on February 1, 2014, when he returned his keys to the rental unit. The landlord did not return any portion of the tenant's security deposit and applied to retain that deposit on the basis that the landlord lost rent for February 2014, and had to clean and paint doors and walls. The landlord did not submit a separate request for painting.

#### Analysis – Landlord's Application

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the tenant was in breach of his fixed term tenancy Agreement because he vacated the rental premises prior to the June 30, 2014 date specified in that Agreement. As such, the landlord is entitled to compensation for losses she incurred as a result of the tenants' failure to comply with the terms of their Agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent for February 2014. However, section 7(2) of the *Act* places a responsibility on a landlord claiming

compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

In this case, the tenant entered into written evidence copies of emails and rental website advertisements to demonstrate that the landlord left the task of re-renting the premises solely to him. Although she kept checking with him periodically to determine whether he was being successful in re-renting the premises, she did not make any attempt herself to mitigate the tenant's exposure to her rental loss for February 2014. The tenant entered undisputed sworn testimony and written evidence that he was able to locate two potential tenants and gave their contact information to the landlord. The landlord testified that she was not able to enter into a new tenancy agreement with either of these individuals. She testified that she only started trying to re-rent the premises herself after she took possession of the rental unit on February 1, 2014. Once the landlord commenced her own efforts to re-rent the premises, she was able to find new tenants willing to pay more rent than was being paid by the tenant by February 12, 2014, when the new tenants signed a fixed term tenancy agreement with the landlord.

Under these circumstances, I find that the landlord has not met the test required by section 7(2) of the *Act* as I find that she did not adequately attempt to mitigate her loss of rent for February 2014. Rather than taking any measures to re-rent the premises after receiving the tenant's notice to end this tenancy on December 28, 2013, the landlord waited to see if the tenant could re-rent the premises himself. By taking no action until early February 2014 to try to attract prospective tenants, I find that the landlord has forfeited her entitlement to a monetary award for the loss of rent she suffered for February 2014. I dismiss the landlord's application for a monetary award for loss of rent arising from the tenant's contravention of the terms of the Agreement without leave to reapply.

I do find that the landlord suffered the loss of \$150.00 due to the tenant's failure to pay his move-out fee to the strata corporation. I agree with the landlord's claim that this is a cost that a tenant bears and is not typically shared with the landlord unless such a provision is expressly included in the Agreement or an Addendum to the Agreement. In the absence of any such provision, I issue a monetary award in the landlord's favour in the amount of \$150.00 to enable the landlord to recover this loss arising out of the tenant's premature ending of this Agreement.

I reduce the amount of the landlord's monetary award for losses arising out of this tenancy by the additional \$30.00 in monthly rent which the landlord is to receive from the new tenants for the remaining four months of this tenancy (i.e., from March 1, 2014 until June 30, 2014) which was to end on June 30, 2014. I make this deduction from the

monetary award issued to the landlord as I find that the true loss experienced by the landlord as a result of the tenant's actions must reflect this profit that the landlord gained from receiving more monthly rent from the new tenants than the landlord would have received from the tenant under her Agreement with him.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. Although the landlord claimed that she conducted a joint move-in condition inspection and provided a report of that inspection to the tenant, I find on a balance of probabilities that the tenant gave more credible and consistent evidence that no such actions were taken by the landlord at the beginning of this tenancy. The landlord did not enter into written evidence any copies of reports she produced from either the move-in or move-out inspections. She provided no dates when these reports were completed or any explanation as to how and when these reports were provided to the tenant. Although I tried many times at the hearing to explain what a report was to the landlord's translator, neither the translator nor the landlord seemed to have a proper understanding of what was involved in producing a report of a condition inspection.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 23 of the *Act* reads in part as follows:

- 23** (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*
- (2) *The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*
- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and*
  - (b) a previous inspection was not completed under subsection (1).*
- (3) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

*(4) The landlord must complete a condition inspection report in accordance with the regulations.*

*(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*

*(6) The landlord must make the inspection and complete and sign the report without the tenant if*

*(a) the landlord has complied with subsection (3), and*

*(b) the tenant does not participate on either occasion...*

Section 24 of the *Act* establishes that if a joint move-in condition inspection does not occur or a report of that inspection is not produced and provided to the tenant, the landlord's right to claim against the tenant's security deposit is extinguished. In this case, I find that the landlord's right to claim against the tenant's security deposit was extinguished under section 24 of the *Act* by the landlord's failure to abide by the requirements of section 23 of the *Act*.

Although I accept that the landlord did participate in a joint move-out condition inspection on February 1, 2014, I find on a balance of probabilities that the landlord did not complete a joint move-out condition inspection report as required by section 35(3) of the *Act* and did not provide a copy of that report to the tenant in accordance with section 35(4) of the *Act*. The landlord's failure to take either of these actions again extinguished her right to retain the tenant's security deposit (section 36 of the *Act*). Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-out condition inspection and inspection report, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy has been extinguished.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Without a properly completed joint move-in or move-out condition inspection report before me, I find that the landlord has provided little evidence to demonstrate that she is entitled to a monetary claim for damage arising out of this tenancy. Based on a balance of probabilities, I find that the tenant's evidence of emails exchanged with the landlord confirm that the carpets in this rental unit were not in good condition when this tenancy started. The landlord's own email confirmed that she was aware that the carpets were not in good condition. Other than her sworn testimony, the landlord produced no evidence to demonstrate that the carpet cleaning she paid for arose from damage caused by the tenant. I dismiss the landlord's application for a monetary award for carpet cleaning without leave to reapply as I find that the landlord has not demonstrated her entitlement to a monetary award for this item for damage arising during the course of this tenancy.

I also note that the date of the landlord's carpet cleaning invoice was January 4, 2014, weeks before this tenancy ended. At the hearing, the landlord's only explanation for the timing of the carpet cleaning bill she entered into written evidence was that the carpet cleaners must have written the wrong date on their bill for services. However, I note that January 2014 appeared twice on the carpet cleaner's bill.

As the landlord has been unsuccessful for the most part in her application, she bears the responsibility for her filing fee.

#### Analysis- Tenant's Application

I find little substance to the tenant's application for the recovery of either his move-in fee or his move-out fee charged by the strata corporation. He testified that he paid the \$150.00 move-in fee to the strata corporation. As noted above, without any provision within the Agreement or an Addendum to that Agreement, I find that it would be very unusual for a landlord to become responsible for a tenant's strata moving fees. I also note that the tenant confirmed that he did not actually pay anything to the strata for his move-out charge, so has not demonstrated any actual losses with respect to the move-out fee. I dismiss the tenant's application for the recovery of both of these fees without leave to reapply. I so as I find on a balance of probabilities that the written terms of the Agreement take precedence over any failure to abide by disputed terms of an alleged oral agreement between the parties with respect to these fees.

Although I have considered the tenant's application for the recovery of a \$105.00 bill for faucet repairs, I am not satisfied that the tenant has provided sufficient evidence to demonstrate his entitlement to the recovery of these costs. The copy of the bill produced for this work was not on any letterhead, was not signed, and involves little detail other than that a faucet was repaired on September 28, 2013. The tenant has

produced few other details to show that he is entitled to any monetary award for these repairs. I dismiss this element of the tenant's application without leave to reapply.

I find that the landlord did apply to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address. I order the landlord to return the tenant's \$675.00 security deposit forthwith. No interest is payable over this period.

As the landlord's original application did not clearly identify that the landlord was seeking authorization to retain the tenant's security deposit, I find that the tenant did have reason to apply for the return of his deposit. Under these circumstances, I find that the tenant is entitled to recover his \$50.00 filing fee from the landlord.

### Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to obtain a return of his security deposit and his filing fee, less the monetary award issued to the landlord for the landlord's demonstrated losses arising out of the tenant's actions in ending this tenancy early:

Item	Amount
Return of Security Deposit to Tenant	\$675.00
Less Landlord's Entitlement to a Monetary Award for Losses Arising out of this Tenancy (\$150.00 Move-Out Fee – (4 x \$30.00 per month = \$120.00 for Landlord's Receipt of Increased Rent) = \$30.00)	-30.00
Recovery of Tenant's Filing Fee	50.00
<b>Tenant's Total Monetary Order</b>	<b>\$695.00</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 30, 2014

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Residential Tenancy Branch



