



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNSD, MND, MNDC, FF

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord to retain the tenant's security deposit as authorized by the tenant. The deposit was to be retained in exchange for the landlord allowing a mutual agreement to end the fixed term tenancy before the expiry date. The landlord is also seeking a monetary order for repairs and cleaning.

Despite being served by registered mail sent on February 14, 2014, as verified by the Canada Post tracking numbers, neither of the co-tenants appeared.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for damages or loss?

### **Background and Evidence**

The landlord testified that the one-year fixed-term tenancy began on April 1, 2013. When the tenants encountered hardship and requested a termination of their tenancy effective January 31, 2014, there was a mutual agreement to terminate the tenancy

According to the landlord, they consented to the mutual agreement to release the tenants from their obligation to fulfill the terms of the one year tenancy agreement on the following conditions:

- The tenants allow them access to show the unit to re-rent the unit.
- The tenants agree to leave the rental unit in a clean undamaged condition.
- The tenants permit the landlord to retain the \$400.00 security deposit.

The landlord testified that, after the tenants had already given their consent to the above terms, signed the mutual agreement and moved, they then made a written

demand for the return of their security deposit by the landlord and also refused to pay for cleaning and damages left in the unit.

The landlord submitted into evidence a copy of the tenancy agreement, copies of communications between the landlord and tenants, a list of damages and costs, copies of receipts, a copy of a Mutual Agreement to End Tenancy and some before and after photos of the rental unit.

The landlord is claiming \$2,821.00 including loss of half a month rent, \$126.00 for carpet cleaning, \$157.50 for cabinet repairs, \$115.25 for wall repairs, garbage removal and the cost of flooring repairs.

### **Analysis**

Section 38(4) states that a *landlord may retain an amount from a security deposit or a pet damage deposit if,*

*(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or*

*(b) after the end of the tenancy, the director orders that the landlord may retain the amount. (my emphasis)*

Based on the landlord's undisputed evidence, I find that the tenant did agree to all of the landlord's terms and did consent in writing to forfeit their security deposit in exchange for the landlord signing a Mutual Agreement terminating the fixed term tenancy prior to the expiry date. Therefore, I find that the landlord was never required to refund the tenant's security deposit.

In regard to the landlord's claim for additional damages, I find it important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the tenant of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof the claimant took steps pursuant to section 7(2) of the Act minimize the loss.

In this instance, the burden of proof is on the landlord, to 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 respondent.

Section 37(2) of the Act states, upon vacating a rental unit, the tenant must leave it reasonably clean and undamaged, except for reasonable wear and tear.

Based on the undisputed evidence before me, I find that the tenants did not leave the rental unit reasonably clean and undamaged. I therefore find the landlord's claim for carpet cleaning costs in the amount of \$126.00 meets all elements of the test for damages. I also find that, the landlord is entitled to \$157.50 to refurbish a cabinet, \$115.25 for wall repairs and \$60.00 towards the cost of garbage removal.

In regard to the landlord's claim for replacement flooring, I find that awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred.

Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate the pro-rated value of the replaced item, reference is made to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40.

In this case, I note that the average useful life of flooring is set at 10 years. Given that the landlord was not able to provide proof of the age of the flooring, I find that the landlord's claim has not successfully met the test for damages and must be dismissed.

Based on the evidence before me, I find that, in addition to retaining the tenant's \$400.00 security deposit pursuant to written permission given by the tenants, the landlord is also entitled to a further monetary order of \$508.75, comprised of \$126.00 for carpet cleaning, \$157.50 for cabinet repairs, \$115.25 for wall repairs, \$60.00 for garbage removal and the \$50.00 cost of this application.

I hereby grant a monetary order in favour of the landlord in the amount of \$508.75. This order must be served on the landlord and may be enforced in small claims court if necessary.

**Conclusion**

The landlord is successful in the application and is ordered to keep the tenant's security deposit as agreed by the parties and is also granted a Monetary Order for damages and cleaning costs.

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 04, 2014

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Residential Tenancy Branch

