



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Landlord: MNR, MNDC, MNSD, FF  
Tenant: MNSD

### Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

The hearing originally convened on July 2, 2014 but by agreement of both parties it was adjourned to July 25, 2014.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and utilities; for carpet cleaning; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for return of double the amounts of the security and pet damage deposits and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on September 10, 2013 for a year fixed term tenancy beginning on October 1, 2013 for the monthly rent of \$650.00 due on the 30<sup>th</sup> or 31<sup>st</sup> of each month with a security deposit of \$325.00 and a pet damage deposit of \$325.00 paid. The tenancy ended on January 31, 2014.

The landlord submits that by the parties agreed in early January 2014 that the tenant would vacate the rental unit at the end of January 2014 and move into another unit that the landlord owns in the residential property. However the tenant decided in mid January 2014 that she would move out of this unit and move to another location – not the other unit agreed upon by the parties. The landlord also testified that a tenant moved into this rental unit on February 1, 2014. The landlord seeks lost revenue of \$650.000 for February rent due to the tenant's short notice to end both tenancies.

The landlord has submitted emails dated September 29, 2014 suggesting that she intended to meet with the tenant on September 30, 2013. While there is nothing specific in the emails the landlord submits that this was intended to be the move in inspection.

The next email submitted by the landlord is dated October 6, 2014 in which the landlord states that she was sorry for not getting in touch with the tenant over the weekend to deal with repairs – there is no mention an inspection. The first mention of an inspection is in an email dated November 1, 2013 from the tenant to the landlord with the tenant asking to complete the inspection.

The landlord has submitted several photographs showing the condition of the rental unit at the end of the tenancy. The tenant submits that while she agrees with some of the landlord's claim she also has photographs showing the unit was cleaner than the landlord is asserting. She also submits the unit was much cleaner at the end of the tenancy than at the start of the tenancy, thanks to her own efforts. The tenant did not submit any photographs into evidence.

The landlord submits the tenant also did not leave keys to the rental unit at the end of the tenancy. The tenant states that she did leave all keys in the rental unit. She also states that she did not get some of the cleaning done because she was rushed out of the rental unit.

She states the landlord got there at 5 minutes after 1:00 p.m. and demanded that she be out so that that the carpet cleaner could come and clean the carpets. The tenant said she was then rushed out even though she thought, at the time, that she had until midnight to move out of the rental unit.

The landlord seeks \$80.00 for cleaning; \$80.00 for carpet cleaning; \$39.99 for a front door lock and \$39.97 for a patio door lock. The landlord also seeks \$25.00 for the cost of developing her photographic evidence.

The tenant confirmed that she provided her forwarding address to the landlord on February 1, 2014. The landlord filed her Application for Dispute Resolution on February 12, 2014.

The tenant seeks double the amount of the security deposit because the landlord failed to complete a move in condition inspection or a Condition Inspection Report at the start of the tenancy.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Based on the evidence before me, I find that the parties had a previous agreement, although nothing was presented to me in writing, that the tenant would be ending the tenancy in this unit

and moving to an upstairs unit. As a result, I find this tenancy ended by mutual agreement on January 31, 2014.

As such, I find the tenant's notice stating that she was not moving into the other rental unit is not the same as giving a notice to end the tenancy and as such the landlord is not entitled to any compensation for this tenancy for lost rent. Furthermore, this rental unit was rented to another tenant effective February 1, 2014 and as a result I find the landlord has not suffered a loss of revenue for this rental unit.

I note however, that it also appears that the parties may have entered into a separate and new tenancy agreement for the rental unit. Any debts incurred as a result of that tenancy are not included in the landlord's Application that is before me. Both parties remain at liberty to file a separate Application for Dispute Resolution for any claims that they feel they may be entitled to in regard the other tenancy.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

While I accept a move in condition inspection was not completed at the start of the tenancy I note the landlord is not claiming for any damage to the property but only for cleaning. Section 37 requires the tenant to leave the rental unit reasonably clean at the end of the tenancy and this requirement is not contingent upon the condition of the unit at the start of the tenancy.

Based on the photographic evidence I accept the landlord has established that the rental unit required both cleaning and carpet cleaning. I find the landlord has also established the value of each of those services at \$80.00 each or a total of \$160.00.

As to the replacement locks I find that despite the fact that the tenant disputes that she failed to leave the keys that required the landlord to change the locks I find on a balance of probabilities and based on the testimony of both parties that the tenant likely did forget to leave the keys. I find the landlord has established the value of the replacement locks at a total of \$79.96.

As to the landlord's claim for recovery of the cost of photographs I note that *Act* does not provide for compensation for the production of evidence or to support a claim against the other party in a tenancy. I therefore dismiss the landlord's claim for \$25.00 for printing of photographs.

Section 23 of the *Act* requires a landlord and tenant to inspect the rental unit on the day the tenant is entitled to possession of the unit. The Section goes to state that it is the landlord's obligation to set the time of the inspection and complete a Condition Inspection Report and provide a copy of that Report to the tenants.

Section 24 stipulates that the landlord extinguishes her right to claim against a security deposit for damage to the property if the landlord does not provide the tenants with at least 2 opportunities to complete a move in inspection; or does provide the opportunity but then does not participate in the inspection; or does not complete the Condition Inspection Report and give a copy to the tenants. However, the landlord's right to claim against the deposit for unpaid rent or lost revenue is not extinguished by this failure.

As the landlord did file an Application for Dispute Resolution that included a claim for lost revenue I find the landlord was allowed to retain the deposit until the matter was determined.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the tenant provided her forwarding address on February 1, 2014 and the landlord filed her Application for Dispute Resolution on February 12, 2014 I find the landlord has met her obligations under Section 38(1) and the tenant is not entitled to double the amount of the security or pet damage deposits.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$264.96** comprised of \$160.00 cleaning and carpet cleaning; \$79.96 for replacement locks; and \$25.00 of the \$50.00 fee paid by the landlord for this application as she was only partially successful in her claim.

I order the landlord may deduct this amount from the security and pet damage deposits held in the amount of \$650.00 in satisfaction of this claim. I grant a monetary order to the tenant for the amount of the balance owed of **\$385.04**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced 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: July 28, 2014

---

Residential Tenancy Branch

