



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

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

At the outset of the hearing, I confirmed with the landlord that despite his Application indicating that the landlord believes the tenant has caused the landlord a loss of \$3,030.00 the landlord only seeks to retain the security deposit in the amount of \$890.00 as settlement for all claims.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to retain the security deposit for damage to the rental unit; for money owed; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began on July 1, 2013 as a 6 month fixed term tenancy for the monthly rent of \$1,780.00 due on the 1<sup>st</sup> of each month with a security deposit of \$890.00 paid. The tenancy ended on December 31, 2013.

The landlord submits that the tenant did not pay move in and move out fees, in the amount of \$400.00. The tenant submits that when he moved in to the rental unit he had nothing but a suitcase and did not think he needed to pay the fee. The tenant also submits that if the landlord had proof that he had to pay the fees to the strata he would pay the landlord.

The landlord submitted a copy of a cheque made payable to the strata dated January 15, 2014 in the amount of \$400.00 with a notation that it is for move in and move out

fees. The tenant does not believe that this proves the landlord made any payment and that he simply may have just written a cheque with giving it to the strata.

The landlord submits that the tenant refused him entry to the rental unit between November 20 and 30, 2013 when he wanted to show the unit to a person from outside of the country who was interested in renting the unit for January 1, 2014. The landlord provided no evidence or testimony of any advertising or attempts to show the rental unit in December 2013. The landlord seeks compensation in the amount of \$1,780.00

The parties confirmed that the landlord did not conduct move in or move out condition inspections or provide reports to the tenant at the start or end of the tenancy.

The landlord submits the tenant left the rental unit uncleaned and a light fixture not working in the kitchen; 12 "different black burn holes and marks" on carpets; and a broken ceramic bowl cover in the master bathroom. The landlord provided some photographs from the end of the tenancy and some invoices and estimates in support of his claim.

### 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.

In regard to the landlord's claim that he was required to pay \$400.00 in move in and move out fees to the strata I accept the landlord's evidence that he issued a cheque for payment to the strata. As such, from the tenant's agreement I find the tenant is responsible to reimburse the landlord for this payment.

As to the landlord's claim for compensation for the loss of one month's rent due to the tenant's failure to allow the landlord access to the rental unit to show the unit to one potential tenant, I find that as the landlord provided no evidence that he attempted to rent the unit to anyone else for the entire month of December 2013 that he cannot hold the tenant responsible for his failure to rent out the unit prior to the end of this tenancy. I dismiss this portion of the landlord's claim.

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 on 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 tenant.

Section 24 stipulates that the landlord extinguishes her right to claim against a security deposit for damage or cleaning of the rental unit if the landlord does not provide the tenant 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.

As per the testimony of both parties I find the landlord, by failing to complete a condition inspection and a Condition Inspection Report at the start of the tenancy the landlord has extinguished his right to claim against the deposit for any damages to the property.

Further, as the landlord has provided no evidence of the condition of the rental unit at the start of the tenancy I find the landlord cannot establish that any damage or cleaning required resulted during the tenancy or are the responsibility of the tenants. As such, I dismiss this portion of the landlord's claim.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$425.00** comprised of \$400.00 move-in/move out strata fees and \$25.00 of the \$50.00 fee paid by the landlord for this application, as he was only partially successful in his claim.

I order the landlord may deduct this amount from the security deposit held in the amount of \$890.00 in satisfaction of this claim. I grant a monetary order to the tenant in the amount of **\$465.00** for return of the balance of the security deposit.

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: September 26, 2014

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Residential Tenancy Branch

