



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

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

## **Introduction**

This Dispute Resolution hearing was to deal with the tenant's claim for the return of double the security deposit not refunded by the landlord within 15 days after receiving the forwarding address.

The hearing was also scheduled to deal with an application by the landlord seeking a monetary order for repairs and cleaning and to justify keeping the security deposit in partial satisfaction of the claim.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

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

Is the landlord is entitled to monetary compensation under section 67 of the *Act* for damages?

Is the tenant entitled to a refund or credit for double the security deposit?

## **Background**

The tenancy began on June 1, 2013 and current rent was \$1,250.00, plus 40% of utilities. A security deposit of \$625.00 and pet damage deposit of \$625.00 were paid at the start of the tenancy.

A signed move-in condition inspection report was completed and placed in evidence. The tenant testified that, when they arrived for the inspection before moving in, the inspection form had already been completed by the landlord in advance. The tenant

testified that the rental unit was not in pristine condition at the time they first took occupancy, but they signed the form indicating that the unit was satisfactory.

The tenancy ended on May 31, 2014. The move-out condition inspection report was also completed at that time and was signed by both parties.

The evidence indicates that, as part of the move-out condition inspection report, the landlord and tenant made a detailed written agreement that the landlord could retain \$240.00 of the tenant's security deposit for cleaning and repairs, provided that the landlord send the tenant documents and photos verifying of the condition of the floors before the tenant moved in and the age of the floors. The landlord also committed to provide proof of the losses being claimed for the floors and some missing screws in the vents.

However, according to the tenant, the landlord never provided the verification promised as part of their agreement to let the landlord keep \$240.00 and the landlord also failed to refund the remaining security and pet damage deposit totaling \$1,010.00.

The landlord is now claiming:

\$140.00 for cleaning,

\$15.00 for vent repair costs,

\$200.00 to replace the floor,

\$1,250.00 for lost rent, and

\$48.72 for the tenant's portion of the final utility bills.

The landlord testified that the unit was left in a state that required significant cleaning and repair and pointed out that, because of this, they were not able to re-rent the unit during the month of June 2014. The landlord testified that the tenant also owes some unpaid utilities for 24 days in May 2014 based on an invoice they received after the tenancy ended..

The tenant stated that they do not dispute the \$48.72 utility charges.

In regard to the cleaning claim, the tenant testified that they left the rental unit reasonably clean except for the oven, which was genuinely overlooked.

The tenant testified that the floor was not damaged by the tenant, but that staples underneath the flooring, apparently on the subfloor, started to protrude through the linoleum. The tenant pointed out that this occurred through normal use. The tenant stated that they believe the flooring is not new and they doubt the landlord's claim that

the floor was recently installed. The tenant feels that this suspicion is supported by the fact that the landlord never furnished the promised documentation for the flooring to support the \$240.00 payment agreement and only sent the data over four months later as part of the landlord's application for dispute resolution.

With respect to the cost of the vent repairs, the tenant testified that this claim relates to two missing screws on vintage vents that were not removed by the tenants. The tenant's position is that this could be considered a building maintenance issue, not a repair.

In regard to the landlord's allegation that the unit was vacant for a month due to the condition issues, the tenant testified that they are aware that the landlord moved a new renter into the suite immediately after the tenants vacated. The tenant stated that this was confirmed by others and they know it to be true because the tenant apparently knows the new occupants.

The tenant disputes all of the landlord's claims except for \$25.00 for the oven cleaning and the \$48.72 for the utilities owed.

### **Analysis: Landlord's Monetary Claim**

With respect to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is 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 Respondent in violation 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 that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof was 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.

In regard to cleaning and repairs, I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In regard to the agreement between the parties stating that the landlord is authorized to retain \$240.00 from the security deposit for cleaning and repairs, I find that the agreement is not valid because the landlord repudiated it by not furnishing the promised data and by the fact that the landlord failed to refund the remainder of the deposit in the amount of \$1,010.00.

In reviewing the additional claims, I find that the landlord has not sufficiently met all elements of the test for damages with respect to the claims for new flooring, repairs to the vent, nor the \$140.00 cleaning costs and these claims must therefore be dismissed.

With respect to the alleged loss of one month rent, I find that the landlord did not submit sufficient evidence to establish that the unit was vacant and the tenant provided compelling testimony that the unit was occupied in June, 2014.

Based on the evidence and the testimony, I find that the landlord is entitled to monetary compensation of \$73.72, comprised of \$25.00 for cleaning the oven and \$48.72 for the hydro cost.

### **Analysis: Tenant's Claim for Security Deposit**

With respect to the return of the security deposit and pet damage deposit, I find that section 38 of the Act requires that, within 15 days after the tenancy ends and the landlord receives the tenant's forwarding address in writing, the landlord must either: a) repay the security deposit or pet damage deposit to the tenant with interest or; b) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days after the forwarding address has been given, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the deposit.

I find that, in this case, the landlord made their application to keep the deposit within the 15-day deadline. Based on the above, I find that \$1,200.00 is being held in trust by the landlord for the tenant and the tenant is not entitled to double the amount.

In setting off the landlord's entitlement of \$73.72 and the tenant's security deposit of \$1,250.00, I find that the remainder left in favour of the tenant is \$1,176.28.

I hereby grant a monetary order to the tenant for the remainder of \$1,226.28, comprised of \$1,176.28 and the \$50.00 cost of the application. This order must be served on the landlord in accordance with the Act and if necessary can be enforced through Small Claims Court.

The remainder of the landlord's application is dismissed without leave.

### **Conclusion**

Both parties are partially successful and the landlord is granted entitlement to retain a portion of the tenant's security deposit, with a monetary order issued to the tenant to refund the remainder.

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: October 16, 2014

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Residential Tenancy Branch

