



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            MND, MNSD, FF

### Introduction

This hearing dealt with a landlord's application for compensation for damage to the rental unit and cleaning; recovery of the filing fee paid for this application; and, authorization to retain the tenant's security deposit.

Both parties appeared or were represented at the originally scheduled hearing of October 28, 2014. During that hearing date, both parties asserted that some or all of the evidence and submissions provided to the Branch were not provided to each other; and, I determined that I had not received certain documentation that had been served upon the other party. I made orders to each party with respect serving or re-serving evidence upon each other and the Branch and I adjourned the hearing. Notices of Adjourned Hearing were sent to both parties at the addresses they provided.

During the period of adjournment I received the evidence I ordered the parties to provide me, including proof of service of evidence and submissions upon the other party.

At the reconvened hearing of December 9, 2014 the landlord and tenant appeared; however, the tenant requested the hearing be adjourned again because the law student he wished to represent him was unavailable. I granted the adjournment and Notices of Adjourned Hearing were sent to each party at the addresses they provided.

At the reconvened hearing of February 18, 2015 only the landlord appeared. I was satisfied the landlord had served the landlord's evidence to the tenant, as so ordered at the initial hearing, as evidenced by her undisputed testimony and a fax transmittal report dated October 29, 2014. The landlord also confirmed receipt of the tenant's evidence and written submissions as I had ordered the tenant to serve to the landlord. As such, I accepted and considered the documentary evidence and submissions of both parties.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant for cleaning and/or damage in the amount claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

### Background and Evidence

The collected a security deposit of \$272.50 for a tenancy that commenced on June 1, 2005. The tenant signed a move-in inspection report on June 1, 2005. The tenancy was set to end February 28, 2014; however, possession of the rental unit was returned to the landlord and a move-out inspection report was prepared and signed by the parties on February 25, 2014. The tenant provided a written forwarding address to the landlord in writing by way of a letter dated June 11, 2014. The landlord received the letter in the mail and filed this Application on June 25, 2014.

The landlord seeks to retain the tenant's security deposit in satisfaction of all damages and loss incurred by the landlord because the tenant damaged the walls and left the rental unit very dirty.

During the hearing, the landlord testified that the condition inspection reports used by the landlord are triplicate forms and the landlord provided the tenant with a copy of the reports at the time of the move-in and move-out inspections.

The landlord testified that the landlord spent 10 – 12 hours cleaning the rental unit and the owner compensates her \$25.00 per hour. The landlord testified that cleaning activities included: removing spoiled food from the cupboards; cleaning the cupboards and other surfaces; cleaning the appliances, bathroom fixtures, floors, ceilings; and, taking rotten patio furniture and other household waste to the dumpster.

The landlord pointed to the move-out inspection report and photographs in support of her position. I noted that the move-out inspection report reflects that nearly everything in the rental unit was recorded as being dirty or in need of further cleaning. The landlord testified that the rental unit was very dirty and unsanitary. The landlord testified that the photographs were taken on February 25, 2014 while the tenant was sitting on the patio of the rental unit.

The landlord testified that the damage to the walls was rectified by filling the damaged areas with putty, which was done by the painter; however, in recognition of the length of this tenancy no amount was specifically claimed for painting or wall damage.

On the move-out inspection report the tenant wrote a statement acknowledging that he has left without completing the cleaning and asserted he was doing so because of harassment by the landlord.

In the tenant's statutory declaration he states that he does not remember receiving the move-in or move-out inspection reports; that he cleaned the rental unit with the exception of the living room; and, that he felt harassed by a number of letters posted on his door in February 2014 and

a verbal statement from the landlord that the tenant would not be receiving a refund of his security deposit.

The tenant included copies of the letters the landlord had posted on the tenant's door in February 2014. The letters invite the tenant to schedule a move-out inspection with the landlord.

### Analysis

Under the Act, a tenant is required to leave a rental unit "reasonably clean" and vacant which includes removal of the tenant's garbage and abandoned personal property. Where a tenant fails to leave a rental unit reasonably clean and devoid of personal property the landlord may seek compensation from the tenant to clean the unit and remove abandoned property or garbage.

In this case, I prefer the landlord's written and oral submissions that the tenant left the rental unit very dirty, which were subject to my examination during the hearing, over the tenant's written submissions only. I also find the landlord's position is consistent and supported by the photographs and move-out inspection report provided for my review. Therefore, I accept that the rental unit was not left reasonably clean and vacant of all of the tenant's possessions such as garbage and abandoned property.

Upon review of the letters posted on the tenant's door by the landlord provided as evidence by the tenant, I reject his assertion that he left the rental unit without fully cleaning it due to harassment on part of the landlord. Rather, it was clear to me that the landlord was attempting to schedule a date and time for move-out inspection with the tenant. I do not consider attempts to fulfill one's obligation under the Act to constitute harassment. Further, the Act imposes obligations on both a landlord and tenant with respect to refunding a security deposit and provides remedies to both parties where obligations are not fulfilled by the other party; thus, I did not find it necessary to further consider the tenant's allegation that the landlord told the tenant he would not be receiving a refund of his security deposit. Therefore, I find the tenant failed to demonstrate that the landlord unreasonably interfered with his ability to leave the rental unit reasonably clean.

Upon review of the photographs and upon hearing from the landlord I accept that it is reasonable that the landlord spent 10 – 12 hours to clean the rental unit and remove the tenant's garbage from the rental unit. I further accept compensation of \$25.00 per hour to be within reason. Accordingly, I award the landlord \$250.00 for cleaning and garbage removal. As the landlord has established an entitlement to compensation from the tenant under the Act, I further award the landlord recovery of the \$50.00 filing fee paid for this application. Therefore, I find the landlord entitled to compensation totalling \$300.00.

I prefer the landlord's testimony during the hearing that she gave copies of the condition inspection reports to the tenant at the time of the inspection over the tenant's written submission that he did not remember receiving copies of the reports. I prefer the landlord's testimony as it was subject to my examination during the hearing and I found that she testified with certainty and consistently as opposed to the tenant's inability to recall receiving the reports. I was also satisfied that the landlord filed this Application within 15 days of receiving the tenant's forwarding address in writing as required under the Act. Therefore, I find insufficient evidence to conclude the landlord extinguished the right to claim against the security deposit as submitted by the tenant.

The landlord has requested retention of the security deposit in full satisfaction of all damages and losses awarded to the landlord. Under the Act, interest has accrued on the security deposit. I calculate the interest to be \$9.64 based upon the information available to me. Accordingly, I find the landlord is holding a total of \$282.14 for the security deposit and accrued interest. Since this sum is less than the total amount awarded to the landlord I authorize the landlord to retain this sum in full satisfaction of the landlord's losses, as requested.

#### Conclusion

The landlord has been authorized to retain the tenant's security deposit and interest in full satisfaction of the landlord's claims against the tenant.

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: February 20, 2015

---

Residential Tenancy Branch

