



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNSD

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.
- 

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that the landlord handed him a 2 Month Notice to End Tenancy for Landlord's Use (the 2 Month Notice) on June 10, 2014. The tenant also confirmed that he received both the landlord's dispute resolution hearing package and written evidence package sent by the landlord by registered mail on August 19, 2014. I find that the tenant was duly served with the above documents in accordance with sections 88 and 89(1) of the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses and damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

### Background and Evidence

This one-year fixed term tenancy began on February 1, 2012 by way of a fixed term Residential Tenancy Agreement (the Agreement). When the initial term ended, the tenancy continued as a periodic tenancy. Monthly rent was set at \$2,000.00, payable in advance on the first of each month, and \$2,070.00 by the end of this tenancy. The landlord continues to hold the tenant's \$1,000.00 security deposit paid on January 12, 2012.

Although the landlord erred in identifying August 10, 2014, instead of August 31, 2014, as the effective date of the 2 Month Notice, the parties agreed that the tenant vacated the rental unit on August 5, 2014, in accordance with the landlord's 2 Month Notice. The parties also agreed that the tenant did not pay monthly rent for July 2014. This withholding of rent was in accordance with the provision in section 51(1.1) of the *Act* allowing the tenant to withhold the last month's rent when a landlord has issued a 2 Month Notice pursuant to section 49 of the *Act*.

The landlord outlined her application for a monetary award of \$2,014.90 in the Monetary Order Worksheet she submitted as part of her written evidence. This Worksheet itemized her claim as follows:

<b>Item</b>	<b>Amount</b>
General Cleaning	\$315.00
Carpet Cleaning Estimate	451.50
Air Duct Cleaning Estimate	462.00
Garbage Removal	188.00
Doors Replacement	156.80
Locks Replacement	33.60
Labor (for Lock Replacement)	63.00
Unpaid Rent for August 2014 (5 days @ \$69.00 per day = \$345.00)	345.00
<b>Total Monetary Order Requested</b>	<b>\$2,014.90</b>

The landlord entered into evidence a copy of the 2 Month Notice, identifying August 10, 2014, as the effective date when the tenants were to have vacated the rental unit. In addition to the incorrect effective date on the 2 Month Notice, I also note that the landlord's 2 Month Notice failed to identify any reason for ending the tenancy, a requirement of any 2 Month Notice.

The parties confirmed that they participated in an initial inspection of the rental premises when this tenancy began. The landlord did not create any joint move-in condition inspection report. While the landlord conducted her own inspection at the end of this tenancy, she provided no evidence that she gave the tenants written notice for a joint move-out condition inspection, nor did she create a written report of her own inspection of the rental unit at the end of this tenancy.

The landlord entered into evidence a series of photographs of the rental unit and the exterior of this rental property, which she testified accurately reflected the condition of the rental unit after the tenants vacated the rental unit. Three of these photographs

were of the rental unit taken in December 2011, before this tenancy began. Each of the remaining photographs were dated, ranging from August 6 to August 9, 2015. These photographs were submitted in support of the landlord's claim that extensive cleaning and removal of debris and garbage were required at the end of this tenancy.

The landlord entered into written evidence copies of a \$315.00 estimate for the cleaning of the rental unit. It appears that this estimate was not based on any inspection of the premises by the company issuing this written estimate. The landlord testified that she decided to clean the rental unit herself, which she said took considerable time. She also provided a receipt for the removal of junk and debris from the rental property, totalling \$188.00.

The landlord's Monetary Order Worksheet included a \$451.50 estimate for carpet cleaning and a \$462.00 estimate for air duct cleaning. This Worksheet indicated that these estimates were provided to the landlord by telephone. At the hearing, the landlord testified that she did not have the carpets or the air ducts cleaned before she sold the property to the current owner of this property. She testified that the tenant's failure to clean or take care of the rental property resulted in a reduced sale price for this rental property. She said that the carpets eventually had to be removed by the new owners due to the damage arising from this tenancy.

The tenant's witness was the realtor who represented her in the sale of this property at the end of this tenancy. The realtor testified that she had observed the rental property in 2011 or 2012 before this tenancy began. She said that the rental unit was in good move-in condition at that time. She testified that by the end of this tenancy, the rental unit was in very bad condition. She said that lots of realtors who visited the rental property commented on how the tenant had damaged the rental unit and failed to keep it clean. She recalled that the carpet was badly damaged. She said that the property was initially listed for \$590,000, but after lots of showings the landlord had to accept a "huge" price reduction in order to sell it for something around \$550,000.00. She attributed this loss in sale price to the tenant's failure to take proper care of the premises.

The tenant testified that the landlord had altered the dates on many of her photographs. He observed that many of the items shown in the landlord's photographs identified furnishings and possessions which the tenants moved out of the rental unit before the end of their tenancy and before the dates shown in the photographs. He maintained that the landlord's photographs were taken before he, his female friend and others undertook an extensive cleaning of the rental unit. He identified specific photographs purportedly taken by the landlord on August 9, 2015, which showed contents of his

rental unit, which he currently has in his possession at his new residence. He cited mops, brooms, buckets and other personal items evident in the photograph that were his own and were removed after he cleaned the rental unit. He also noted a photograph of a portion of his vehicle in the background of one of the photographs, which he maintained could only have been taken while he still lived at the rental unit and before the premises were cleaned at the end of his tenancy. He testified that he removed all of the garbage in the photographs submitted by the landlord before he surrendered vacant possession of the rental unit to the landlord on August 5. He said that he left his fridge and a television stand on the street with a "free" sign attached at the end of his tenancy. He said that someone removed these items within 24 hours. He testified that the only item left behind at the end of his tenancy was an oak table top shown in one of the landlord's photographs. He said that he removed all of the garbage shown in the landlord's photographs by the end of his tenancy, noting that the rental unit was filled with garbage when his tenancy began. He testified that he and his female friend conducted an extensive cleaning of the rental unit before he vacated the premises.

The tenant did not dispute the landlord's application for the recovery of unpaid rent for the first five days of August 2015, as he admitted that he made no rental payment to the landlord for those days. He also confirmed that he was responsible for damage to one of the doors in the landlord's photographs and in the landlord's claim for damage. He maintained that he obtained an estimate from a local plywood company where he could have obtained a replacement door of the same quality for \$43.99, rather than the \$156.80 claimed by the landlord.

The tenant confirmed that he did not shampoo the carpets at the end of this tenancy. He said that he had booked a carpet cleaning for August 9, 2015, but decided to leave earlier than that date when he realized that the landlord was planning to charge him at a rate of \$69.00 per day for every day he remained in the rental unit in August 2015. He confirmed that many of the stains to the landlord's carpet did arise during the course of his tenancy and could not be removed.

The tenant's witness, his female friend, testified that the landlord's photographs could not possibly have been taken as late as August 9, 2015, because many of the tenant's belongings had been removed by August 5, 2015, when the tenant surrendered possession of the property to the landlord. She testified that one door was broken during the tenancy, but other features of the rental unit appeared to have been damaged as a result of a lack of maintenance by the landlord (e.g., a door handle; a broken light fixture.) The tenant also noted a lack of maintenance, stating that he had to buy his own fridge because the landlord's fridge would not work.

### Analysis

Although the landlord identified August 10, 2014, as the effective end date for this tenancy on the 2 Month Notice, the parties treated the July 2014 as the last month of this tenancy for the purposes of the monetary provisions of section 51(1.1) of the *Act*. The tenant did not dispute the landlord's application to obtain a monetary award for unpaid rent owing from the last five days of his tenancy, the period covering August 1, 2014 to August 5, 2014. The tenant confirmed that she obtained possession of the rental unit on August 5, 2014.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. In this case, I am satisfied that there is undisputed sworn testimony that the tenant failed to pay any rent for the final five days of his tenancy, the period of the landlord's claim for unpaid rent. I find that the landlord miscalculated the unpaid rent owing for the first five days in August as \$69.00 per day instead of the correct daily charge for this tenancy of \$66.77 per day ( $\$2,070.00/31 = \$66.77$ ). I find that the landlord is entitled to a monetary award of \$333.85 ( $\$66.77 \times 5 \text{ days} = \$333.85$ ) in unpaid rent for the first five days of August 2014.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

As was noted by the tenant, section 24(2) of the *Act* reads in part as follows:

### ***Consequences for tenant and landlord if report requirements not met***

**24 (2) *The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord***

***(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.***

The landlord admitted that no joint move-in condition inspection report was completed. Responsibility for completing this report rests with the landlord. Section 36(1) of the *Act* establishes similar provisions extinguishing a landlord's right to retain a security deposit

if proper notification is not provided to conduct a joint move-out condition inspection or if a move-out condition inspection report is not created. Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in and move-out condition inspection processes, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is limited.

Section 67 of the *Act* also establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlord referred to section 14 of the Agreement as the basis for her claim for professional carpet cleaning and air duct cleaning. This section of the Agreement stated that pets were allowed in the premises, but that the "cost of professional cleaning of carpet and air duct 16 vents" would be borne by the tenant at the end of this tenancy. The landlord gave undisputed sworn testimony that she agreed to allow the tenant to keep one small pet on the rental premises, but the tenant had two large dogs stay there during his tenancy.

While there is undisputed testimony supported by written evidence that the tenant did not abide by the terms of section 14 of the Agreement, I find that the landlord has supplied insufficient evidence to demonstrate that she has incurred any actual losses arising out of the tenant's failure to professionally clean the carpets or the air ducts. The landlord did not have the carpets or the air ducts cleaned, and relied for her claim on the results of a telephone estimate of what such cleaning would have cost her had she chosen to have this work done. Although the landlord and her witness, her realtor, said that the landlord had to reduce the asking price of this property in order to complete a sale, I find insufficient evidence before me that the reduced price arose as a result of damage arising out of this tenancy. The realtor was uncertain as to when she inspected the property before this tenancy began, and was not even sure what year this inspection occurred. I find the realtor's evidence was somewhat vague and general in nature; she provided few details as to the actual asking price of the property, and seemed uncertain as to the eventual sale price of the property. I find that the realtor's sworn testimony added little weight to the landlord's claim that a specific reduction in price had to be

undertaken as a result of the tenant's failure to clean the carpets or the air ducts. Although the landlord said that there was a specific reduction in price due to the lack of cleaning, she provided no written evidence to support any such claim. Many factors may factor into a landlord's acceptance of an offer to purchase which is less than the original asking price. On the basis of the evidence provided to me, I find that the landlord has not demonstrated to the extent required that any reduction in her asking price genuinely reflected a loss in value arising out of the tenant's failure to clean the carpets or the air ducts. In coming to this conclusion, I also note that the landlord stated that the new owner decided to replace the carpets. This raises questions as to the condition of the carpets or the age of these carpets. Finally, I note that the landlord's failure to provide any joint move-in or joint move-out condition inspection report makes it very difficult to assess the extent to which any deterioration in the condition of the carpets resulted from the tenant's actions during this tenancy. While the landlord had demonstrated that some damage to the carpets and the air ducts occurred during the course of this tenancy, I find that the landlord has not demonstrated any actual verifiable losses arising out of the tenant's actions. For these reasons, I dismiss the landlord's claim for professional carpet cleaning and air duct cleaning without leave to reapply.

The landlord testified that the tenant did not provide her with his keys to the rental unit, which needed to be replaced at the end of his tenancy. The tenant testified that he left his keys for the landlord in the kitchen of the rental unit. The landlord testified that she did have a separate set of keys to access the rental unit after the tenant vacated the rental unit. Section 25(1) of the *Act* establishes that a landlord bears all costs of rekeying or otherwise changing the locks so that a former tenant does not retain access to a rental unit. For this reason, I dismiss the landlord's application for lock replacement and the labour associated with the replacement of the locks in this rental unit without leave to reapply.

In considering the landlord's claim for the replacement of doors, I first note that there is conflicting testimony as to the extent of the damage to these doors and whether this damage occurred before this tenancy began. Once more, completed joint move-in and move-out condition inspection reports would have been very helpful. I also note that the landlord has not produced any receipt for her actual replacement of the door, and testified at the hearing that she did not actually incur any expenses to replace the door in question. Since the landlord has not demonstrated any specific actual losses resulting from the tenant's actions, I dismiss the landlord's application for the replacement of doors in the rental unit without leave to reapply.

During the hearing, I heard conflicting testimony as to whether the tenant left garbage and debris behind at the end of this tenancy. I find that the tenant and his witness

provided compelling sworn testimony that called into serious question the timing of the photographs taken by the landlord and whether these photographs accurately reflected the condition of the rental unit after the tenant vacated these premises. I find the tenant's testimony in this regard was very specific and convincing, noting as he did an array of his personal items still in his possession and even a portion of his car visible in the landlord's photographs. The absence of a joint move-in condition inspection report also weighs against the landlord's disputed assertion that the premises were in good condition at the beginning of this tenancy. Despite these findings, there is also evidence from the tenant that at least some of the items left at the end of this tenancy were his (e.g. the oak table top), and, as a result, I allow the landlord the recovery of one-third of her proven junk removal costs. This enables the landlord to recover a total of \$62.66 of her \$188.00 cost of garbage removal ( $\$188.00 \times 1/3 = \$62.66$ ).

I have also considered the landlord's claim for the general cleaning of the rental unit, which she undertook at the end of this tenancy. For the reasons cited above and based on a balance of probabilities, I have serious concerns as to the timing of the landlord's photographic evidence, and whether the conditions identified in the landlord's photographs truly reflected the state of the rental unit after the tenant vacated the premises. As was noted earlier in this decision, the absence of a joint move-in condition inspection report makes it difficult for the landlord to dispute the tenant's assertion that the rental unit was filled with garbage and was not properly cleaned when this tenancy began. I am unwilling to allow the landlord's claim for the recovery of \$315.00 in general cleaning expenses, an amount based on an estimate received from a cleaning company. However, based on a balance of probabilities, I find it more likely than not that the landlord did spend at least some time cleaning the rental unit at the end of this tenancy. I allow the landlord a monetary claim of \$160.00 for general cleaning, which is based on 8 hours of cleaning that she undertook at a rate of \$20.00 per hour.

As outlined above, I allow the landlord to retain the above-noted monetary awards, totalling \$556.51 from the tenant's security deposit. I order the landlord to return the remaining \$443.49 to the tenant. No interest is payable over this period.

### Conclusion

I allow the landlord to retain a total of \$556.51 from the tenant's security deposit under the following terms:

Item	Amount
General Cleaning	\$160.00



Garbage Removal	62.66
Unpaid Rent for August 2014 (5 days @ \$6.77 per day = \$333.85)	333.85
Less Tenant's Security Deposit	-1,000.00
<b>Total Monetary Order</b>	<b>(\$443.49)</b>

I order the landlord to return the remaining \$443.49 of the tenant's security deposit to the tenant forthwith. The tenant is provided with these final and binding Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: March 13, 2015

---

Residential Tenancy Branch

