



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF, O  
                             MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied to keep the security deposit for damages and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord.

Both tenants and an agent for the landlord attended, and one of the tenants and the landlord's agent gave affirmed testimony. The tenants also called 2 witnesses who gave affirmed testimony. The parties also provided evidentiary material prior to the commencement of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to question each other and the witnesses respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

The landlord's agent advised that the photographs provided by the tenant as evidence for this hearing were not in her possession, however it was determined during the hearing that the tenants had provided them to the landlord by registered mail, and the landlord has not yet provided them to the landlord's agent. Since the tenants have complied with the *Act* and the Rules of procedure with respect to the evidence, I will consider it. No other issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the landlord established a monetary claim for damages to the unit?
- Should the landlord be permitted to keep the security deposit or pet damage deposit in full or partial satisfaction of the claim?

- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit or pet damage deposit?

### Background and Evidence

The tenant testified that this month-to-month tenancy began on April 1, 2010 and ended on June 30, 2014. Rent in the amount of \$750.00 per month was payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$375.00 as well as a pet damage deposit in the amount of \$200.00. The tenants' dog had died and the landlord returned \$100.00 of the pet damage deposit to the tenants during the tenancy. A copy of the tenancy agreement has been provided.

The tenant further testified that a move-in condition inspection report was completed by the parties at the beginning of the tenancy, but the tenant never received a copy. The landlord had promised to return a copy but didn't. A copy has been provided by the landlord for this hearing, however the tenant testified that there are a lot more checkmarks on the one provided than the one the tenant signed at the beginning of the tenancy. When the tenant signed it, the tenant wrote on it, "Copy to Follow," to signify that a copy had not yet been received. The parties also completed the move-out portion of the report, but again the tenant did not receive a copy until provided with the evidence for this hearing.

The tenants have also provided photographs of the rental unit and testified that they were taken on June 29 and June 30, 2014 by the tenant. The photographs show that the rental unit is reasonably clean and undamaged throughout. The move-out condition inspection report shows that soot remained on walls after the end of the tenancy and the tenant testified that they used a wood stove and had the chimney cleaned a few times during the tenancy, but it is not specified as a part of the tenancy agreement.

The tenant's first witness testified that she did the majority of the cleaning in the rental unit. The witness lives next door and was at the rental unit cleaning during the afternoon of June 29, 2014 and all day on the 30<sup>th</sup> of June. The witness cleaned all the walls, floors, kitchen, fridge, cupboards, and bathrooms. The witness personally cleaned the cupboards inside and out and nothing was left in them. Another friend of the tenant was there for the majority of the day on the 29<sup>th</sup> of June and part of the day on the 30<sup>th</sup> and they also took a load to the dump.

The tenant's witness also testified that she has seen the photographs and confirms that they accurately depict the condition of the rental unit at the end of the tenancy and confirms that the person in one of the photographs is the witness.

The tenant's second witness testified that she is the current landlord of the tenants, and that the tenants keep the rental unit really clean. Previous renters have not always been as good, and the witness has no complaints about the tenants and is very pleased.

The landlord's agent testified that she is a property manager and a friend of the landlord. The agent has not seen the rental unit, but relies on the move-in and move-out condition inspection reports. The landlord's agent knows the landlord to be clean and can't imagine anything would be changed by the landlord after the report was signed.

The landlord's agent also testified that the tenants had been cleaning the chimney during the tenancy and stopped doing that. The majority of the landlord's claim seems to be from soot, which can be caused by not using seasoned wood or cleaning the chimney regularly.

The landlord has provided 3 receipts for cleaning, totalling \$320.00 but the landlord's agent does not know why there are 3. Two of them are not dated.

The landlord's agent also testified that due to the condition of the rental unit at the end of the tenancy the landlord lost revenue for the following month. A letter dated January 13, 2015 which has been provided is from a prospective tenant saying that the rental unit was too dirty. The landlord's agent does not know when the landlord advertised the rental unit or how long it took to get the rental unit ready for re-renting.

The landlord has provided a monetary order worksheet setting out the landlord's claim for \$320.00 for cleaning, \$53.00 for repair of a leak in the bathtub, \$750.00 for loss of revenue, \$48.97 for paint for the master bedroom, and \$64.42 for cleaning supplies, for a total of \$1,171.00. The landlord's agent does not agree that the tenant should pay for the leak in the bathtub or for paint.

### Analysis

The *Residential Tenancy Act* states that where a landlord fails to give the tenant a copy of the move-in and move-out condition inspection reports, the landlord's right to make a claim against the security deposit and pet damage deposit for damages is extinguished. The landlord's agent has no knowledge of if but the tenant testified that she wrote, "copy to follow" on it when she signed it at move-in to signify that a copy was not provided, and I accept that evidence. Therefore, I find that the landlord's right to make a claim for damages against the security deposit and pet damage deposit is extinguished.

However, the landlord's right to make a claim for damages is not extinguished. In order to be successful, the onus is on the landlord to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to reduce such damage or loss.

I have reviewed the photographs and the condition inspection reports. I also consider the testimony of the tenants' first witness who is seen in one of the photographs. The witness and the tenant both testified that the photographs were taken on the 29<sup>th</sup> and 30<sup>th</sup> of June, 2014. The landlord's agent submits that the soot is not likely visible in photographs, however the parties agree that the tenancy agreement is silent with respect to the responsibility of either party to have the chimney cleaned. I am not satisfied that the move-in condition inspection report provided for this hearing can be relied upon because the tenant testified that there were more checkmarks on the one provided for this hearing than the one that the tenant signed at move-in. Therefore, and having found that the landlord failed to comply with the *Act* by providing the tenants with a copy of the condition inspection reports, I find that the landlord has failed to establish element 2 in the test for damages with respect to cleaning the rental unit and for the cost of cleaning supplies.

I have no evidence before me with respect to paint for the master bedroom or for a leak in the bathtub, and I find that the landlord has failed to establish any claim for those items.

With respect to the landlord's claim for loss of revenue, I have no evidence before me with respect to how or when the landlord attempted to re-rent the rental unit. Further, I am not satisfied that the landlord's inability to re-rent was as a result of the tenants' failure to leave the rental unit reasonably clean and undamaged. Therefore, I find that the landlord has failed to satisfy elements 2 and 4 in the test for damages.

The landlord's agent did not dispute that the landlord received the tenants' forwarding address on June 30, 2014 as testified by the tenant, and therefore I find that to be the date. The landlord did not return the security deposit, and having found that the landlord's right to claim against them is extinguished, I find that the tenants have established a claim for double the amounts of the deposits remaining in trust by the landlord, being \$100.00 for a pet damage deposit and \$375.00 for the security deposit. The tenants will have a monetary order in the amount of \$950.00.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee.

I hereby grant a monetary order in favour of the tenants as against the landlord in the amount of \$1,000.00.

The landlord's application is dismissed.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,000.00.

This order is final and binding and may be enforced.

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 30, 2015

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Residential Tenancy Branch

