



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vista Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

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

The hearing was conducted via teleconference and was attended the tenant and two agents for the landlord.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on May 21, 2012 for an 12 month and 9 day fixed term tenancy beginning on May 22, 2012 for the monthly rent of \$2,250.00 due on the 1<sup>st</sup> of each month with a security deposit of \$1,075.00 and a pet damage deposit of \$1,075.00.

The parties the tenant vacated the residential property on October 3, 2014; that the parties conducted a move out inspection on October 3, 2014; and that the tenant provided the landlord his forwarding address on October 3, 2014.

The tenant submits that the landlord has not returned his security and pet damage deposits and seeks compensation for the return of the deposits as well as having them double as per the *Act*, for the landlord's failure to return the deposits within 15 days of the end of the tenancy and receipt of the tenant's forwarding address.

The tenant submits none of the damaged in the rental unit was caused by his pet and as such the landlord has no right to withhold the pet damage deposit. Further the tenant submits that the damage that did occur in the rental unit resulted from reasonable wear and tear and he should not be held responsible for any such damages.

In addition, the tenant submits that the landlord's claim for flooring is not reasonable because the landlord only obtained one estimate and he believes the landlord should have obtained at least two estimates.

The tenant also submits that it was unreasonable for the landlord to require that he have the vertical blinds cleaned within 1 week of the end of the tenancy. He states that had he had found a cleaner who would have completed the work on October 23, 2014 at a lower rate than what the landlord was charged but that the landlord rejected this offer as it was not within the one week deadline provided by the landlord.

The landlord submitted a copy of the move out Condition Inspection Report signed by the tenant agreeing that the Report reflected the condition of the rental unit at the end of the tenancy; that he accept specific responsibility for \$231.00 for 3 days of additional rent for overholding; \$200.00 for cleaning; \$400.00 for window covering cleaning (if the tenant was not able to have the work done within 7 days); \$200.00 for painting walls and trim. The Report also indicates that the floors in the living room; master bedroom and second bedroom had some dents and several scratches.

The tenant also signed the Report agreeing that the landlord could deduct \$1,031.00 plus quoted cost for floor repair from his security deposit and pet damage deposit. The tenant did not dispute signing the Report and the agreement to the deductions.

The parties agreed that they had agreed at the time that the tenant could attend the meeting with the landlord and the flooring provider when the unit was being assessed for floor repairs. The parties agreed that the tenant did attend that meeting. The tenant submitted that the flooring provider would not provide a copy of the estimate, when he asked for it. The landlord submitted that as soon as she received the estimate from the flooring provider she forwarded a copy to the tenant by email. The estimate, submitted into evidence, for floor repairs and replacement was \$2,362.50.

### Analysis

Section 38(1) of the *Act* stipulates that, unless the tenant has agreed in writing that the landlord may retain a security or pet damage deposit, a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Section 38(4) states that the landlord may retain an amount from a security deposit or pet damage deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

I note that Section 38(4) does not stipulate that such agreement to retain the pet damage deposit requires the liability or obligation of the tenant to be specifically related to damage caused by a pet.

In the case before I find that the tenant has agreed in writing, as per Section 38(4) of the *Act* agreeing to allow the landlord to retain \$1,031.00 from his deposits.

I also find that while an amount is not specifically identified for the cost of floor repairs the tenant was well aware that the landlord was seeking repairs to the floors because the Report clearly indicated this and the tenant was to attend the estimate meeting. I find that there was no pre-condition to his agreement for this deduction was contingent on either his approval or any requirement to obtain more than one estimate.

As such, I find that when the tenant signed the Report agreeing to the deductions for the flooring repairs he, in essence, agreed to the amount of the estimate that had not yet been obtained.

Therefore, I find the tenant has agreed to allow the landlord to deduct from his security and pet damage deposits an amount that exceeds the full amounts of both deposits.

As such, I find the landlord was not required to return the either of the deposits or to file an Application for Dispute Resolution seeking to claim against the deposits pursuant to Section 38(1).

### Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

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: April 17, 2015

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Residential Tenancy Branch

