



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF  
                             MNDC, MNSD

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has also applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for a monetary order for return of all or part of the pet damage deposit or security deposit.

The landlord attended and the hearing, gave affirmed testimony, and called one witness who gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution by registered mail on March 20, 2015, and despite making an application and being notified of the date and time of this hearing, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participants who joined the call were the landlord and the landlord's witness. The landlord also orally provided a tracking number issued by Canada Post for the registered mail documents, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Since the tenant has not attended the hearing, the tenant's application is hereby dismissed in its entirety without leave to reapply.

All evidence of the landlord and the testimony of the landlord and the landlord's witness have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for damage to the rental unit?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

**The landlord** testified that this fixed-term tenancy began on August 1, 2013, expired after one year and then reverted to a month-to-month tenancy which ultimately ended on December 31, 2014. Rent in the amount of \$1,200.00 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 tenant in the amount of \$600.00 which is still held in trust by the landlord and no pet damage deposit was collected. A portion of the tenancy agreement has been provided. The landlord testified that the rental unit is one of 89 units in a residential complex.

The landlord further testified that the parties completed a move-in condition inspection report on July 17, 2013 and the tenant signed it. The move-out condition inspection report was done in the absence of the tenant on December 30, 2014. The tenant had given notice to end the tenancy, and then provided the landlord with a forwarding address in writing at least 2 weeks after the tenant had moved out, but the landlord is not sure of the date.

The landlord has provided a Monetary Order Worksheet setting out the following claims:

- \$112.00 for carpet cleaning;
- \$63.00 for additional carpet cleaning;
- \$99.75 for floor repair;
- \$53.73 for cleaning blinds;
- \$20 for drain cleaning;
- \$196.00 for a dishwasher pump;
- \$167.98 for a freezer shelf rail and a refrigerator shelf rail;
- \$366.95 for repairs to the stove;
- \$240.00 for repairs to the bathroom cupboard doors;
- \$4.05 for light bulb replacement;
- \$6.71 for a new kitchen sink plug;
- \$7.50 for 3 bathroom light bulbs;

- \$435.00 for labour for 21.75 hours @ \$20.00 per hour for repairs, including painting and plumbing;
- \$300.00 for 10 hours of cleaning at \$30.00 per hour;
- Further damages to replace the carpet;

for a total of \$2,782.17.

The landlord also testified that the tenant didn't clean the carpets at the end of the tenancy and the tenancy agreement specifies that at the end of the tenancy the carpet cleaning company will be chosen by the landlord to ensure a professional job. The landlord has used the same carpet cleaning person for several years, and the landlord claims \$112.00. A copy of an invoice has been provided in that amount which also states that the carpets were heavily soiled and stained with numerous burns. The landlord had the carpet cleaner back to see if a second cleaning would help, and has provided an invoice in the amount of \$63.00 from the same carpet cleaning company stating that "Vanish" was applied to stains, and the carpets were heavily soiled. The landlord claims both those amounts as against the tenant.

The landlord has also provided a copy of an invoice in the amount of \$330.75 for repairs to floors for 4 different rental units, as well as another that shows that \$95.00 plus GST of that bill applied to this rental unit. The landlord claims \$99.75 for patching the carpet in the entry to the living room, which was left at the end of the tenancy with a burn mark.

The landlord further testified that the tenancy agreement provides that blind cleaning costs come out of the security deposit at the end of the tenancy. The landlord has provided an invoice in the amount of \$53.73 for 3 sets of blinds and 22 vertical slats of blinds.

The tenancy agreement also contains a provision for cleaning sink drains at a cost of \$20.00 which was done by the landlord's maintenance person.

The tenant had damaged the dishwasher and the landlord has provided an invoice for the cost of 2 dishwasher pumps, for which the landlord claims half. A photograph has also been provided which the landlord testified are ceramic chips from something which totally destroyed the pump. The appliances are maintained and serviced regularly and the move-in condition inspection report says nothing about damage or the appliance being inoperable.

The landlord has also provided a photograph of the stove with a small chip in the enamel as well as an estimate for replacing the stove top. The alternative would be to

purchase porcelain paint but that will turn yellow and the landlord does not want to rent units with such obvious damage.

The landlord also stated that the bathroom cupboards have been split and damaged which is beyond normal wear and tear and has provided photographs.

Further, there were 6 light bulbs burned out in the rental unit at the end of the tenancy. The landlord often buys them in bulk, so no receipt has been provided.

The kitchen sink plug was missing at the end of the tenancy and the landlord claims \$6.71 for its replacement, although no receipt has been provided.

The landlord also claims \$435.00 for painting the rental unit and has provided photographs. The landlord testified that the tenant's son used the walls for target practice and admitted doing so. The painting was done by the landlord's own maintenance person, and the landlord has provided an invoice for that amount at \$20.00 per hour. The move-in condition inspection report doesn't mention any damaged walls, and the landlord paints units as required.

The landlord also claims \$300.00 for cleaning the rental unit at \$30.00 per hour for 10 hours. The move-out condition inspection report shows the condition of the carpet, filth on walls, all toilets were totally plugged and the landlord needed to fix them. One had to be removed.

The landlord also claims \$710.00 for additional cleaning by the landlord's witness.

The landlord also testified that there were burn marks in the carpets at the end of the tenancy, however smoking is not permitted under the tenancy agreement.

**The landlord's witness** testified that he is a resident manager and co-manager of the rental complex but was not at the beginning of the tenancy. The witness did the move-out condition inspection report on January 6, 2015 in the absence of the tenant and took photographs. The witness also talked to the tenant about the move-out condition inspection, and the tenant said she'd get back to him with a date. A few days later the witness called the tenant and left a voice mail asking the tenant to get ahold of the witness to set up a time. The tenant had still not replied 2 or 3 days later, so the witness sent a text message to the tenant, and still received no reply.

The witness further testified that he spent about 30 or 40 hours cleaning the rental unit after the tenant had vacated. The tenant left the rental unit filthy from top to bottom. Every toilet was clogged and one had to be removed. The kitchen was completely filthy; every cupboard had old food molded inside, there was some food left in the

bottom of the stove, moldy food behind the stove and fridge, and the freezer and fridge were a mess. The bedrooms took a long time to clean.

The witness also testified that the tenant's forwarding address was received in writing in mid-January, 2015. When asked if the tenant's application which states it was provided on January 16, 2015 is correct, the witness agreed.

### Analysis

Firstly, with respect to the landlord's claim for damages, 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 tenant's 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 mitigate, or reduce such damage or loss.

I have reviewed the move-in and move-out condition inspection reports as well as the invoices and photographs provided by the landlord, and I am satisfied that the landlord has satisfied the test respecting the claims for:

- \$112.00 for carpet cleaning;
- \$63.00 for additional carpet cleaning;
- \$99.75 for floor repair;
- \$53.73 for cleaning blinds;
- \$20.00 for drain cleaning;
- \$196.00 for a dishwasher pump;
- \$167.98 for a freezer shelf rail and a refrigerator shelf rail;
- \$366.45 for repairs to the stove;
- \$435.00 for painting and plumbing;
- \$300.00 for 10 hours of cleaning at \$30.00 per hour
- \$710.00 for additional cleaning, cleaning, painting and other repairs by the landlord's witness.

With respect to the landlord's claim for \$4.05 for light bulb replacement and \$7.50 for 3 bathroom light bulbs, the landlord testified that some were purchased in bulk, and I am satisfied that the tenant failed to replace them and the amount is reasonable. Similarly, I am satisfied that the sink plug was missing at the end of the tenancy and the sum of \$6.71 as claimed is reasonable.

I am not satisfied, however, that the landlord has established the costs for replacing the carpet, or for repairs to the bathroom cupboards, and I dismiss that portion of the claim.

The *Residential Tenancy Act* states that a landlord must return a security deposit in full within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against it within that 15 day period. The *Act* also requires a landlord to provide a tenant with at least 2 opportunities to conduct the move-in and move-out condition inspection reports, and if the landlord fails to do so, the landlord's right to claim against the security deposit for damages is extinguished unless the tenant has abandoned the rental unit. The regulations go into great detail of how that is to happen:

- 17** (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
- (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
  - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
- (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

In this case, the landlord did not propose a date to the tenant or provide a second opportunity in the approved form. I am satisfied the landlord's witness tried to reach the tenant to arrange the inspection several times without success. However, because the tenant provided the required notice to vacate the rental unit, I cannot consider the rental unit abandoned. The landlord had an obligation to comply with the regulations, and I find that the landlord failed to do so, and the landlord's right to claim against the security deposit for damages is extinguished. Therefore, the landlord was required to repay the tenant the security deposit within the 15 day period. The landlord's witness agreed that the landlord received the tenant's forwarding address in writing on January 16, 2015 but did not return the security deposit by January 31, 2015 and did not make the application for dispute resolution until March 13, 2015. The *Act* states that if a landlord fails to act within the 15 day period, the tenant is entitled to double the amount, and I order that \$1,200.00 be deducted from the monetary award for damages.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

In summary, I find that the landlord has established a claim for damages in the amount of \$2,542.17, recovery of the \$50.00 filing fee, which is set off by double the security deposit of \$1,200.00, and the landlord will have a monetary order for the difference in the amount of \$1,392.17.

### Conclusion

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

I hereby order the landlord to keep the security deposit, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,392.17.

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: April 29, 2015

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Residential Tenancy Branch

