



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RAINFORSET CONSTRUCTION LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the landlord – MND, MNSD, MNDC, FF

For the tenant – MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for damage to the unit, site or property; For an Order permitting the landlord to keep all or part of the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order to recover the security deposit; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the tenant entitled to recover all or part of the security deposit?

### Background and Evidence

The parties agreed that this tenancy started on April 01, 2013 for an initial term of one year. On April 01, 2014 the tenancy reverted to a month to month tenancy. Rent for this unit was \$850.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$425.00 on March 14, 2013. The tenant testified that she paid a pet deposit of \$425.00 at the start of the tenancy. The landlord testified that the tenant did not pay the full amount of the pet deposit and referred to the letter from the landlord's accountant stating that \$200.00 was paid on March 17, 2013 and \$40.00 was paid on September 08, 2013.

### **The landlord's application**

The landlord testified that the tenant gave written notice to end the tenancy on September 12, 2014 with an effective date of October 15, 2014. The tenant also agreed in writing that the landlord could keep \$10.00 from the security deposit for the cost of the tenants NSF cheque and \$160.00 from the pet deposit. The landlord testified that when the tenant moved into the unit the landlord was away at that time and the office manager did a walk through inspection of the unit with the tenant; however, no inspection report was completed at that time. The landlord referred to a letter sent in evidence from the office manager stating that everything was in a good condition at the start of the tenancy. When the tenant vacated a move out inspection report was completed and it was found that the tenant had caused damage to the unit which was not repaired at the end of the tenancy.

The landlord testified that six blinds were left broken; one of these blinds may have been broken when the tenant's boyfriend broke a window in the unit. The landlord seeks to recover the cost to replace the blinds and testified that they did this as economically as possible. The blinds were four years old at the start of the tenancy and the landlord has provided photographic evidence showing a damaged blind and the receipt to replace six blinds at a cost of \$346.31.

The landlord testified that the tenant left four lights damaged in the unit. The lights were four years old and appeared to have been broken deliberately. The landlord found to replace the broken lights with the same type was more expensive so the landlord replaced them with a cheaper version. The bulbs also had to be replaced. The landlord has provided photographic evidence showing two broken lights and receipts for replacement lights and bulbs to an amount of \$123.98.

The landlord testified that the tenant had failed to leave the carpets in a reasonably clean condition. The kitchen cabinets also required cleaning. The landlord has provided the invoice for this cleaning. The carpets came to \$85.00 and the cabinets came to \$90.00.

The landlord testified that the tenant failed to return the keys to the unit. The landlord had to replace two keys and seeks to recover the cost of the keys of \$10.00 and the landlord's labour to have the keys cut at \$15.00.

The landlord testified that his handyman charges \$40.00 an hour to do repairs. The landlord found the kitchen cabinets doors were damaged. The landlord did the repairs himself and had to travel to the rental unit, take off the damaged doors, return home with the damaged doors and then glue and clamp them a number of times. The doors then required sanding and re-varnishing. The landlord then returned to the rental unit to fit the doors, the blinds and the lights. The landlord seeks to recover \$560.00 for his time and labour and \$31.00 for ferry costs getting to and from the rental unit.

The landlord seeks an Order to be permitted to keep the security and pet deposit in partial satisfaction of this claim. The landlord testified that there is no further monetary claim for money owed or compensation for damage or loss and the landlord withdrew this section of his claim at the hearing.

The tenant testified that the blinds were older than four years and she did not cause any damage to the blinds. One blind was broken and one was a little crinkly. When the window was broken it did not damage the blind and the tenant paid to have the window repaired.

The tenant testified that she did not break any lights in the unit. If the lights are coming away from the ceiling then that is normal wear and tear.

The tenant testified that she did not have the carpets professionally cleaned at the end of the tenancy but she did have a professional cleaner come into the unit to clean for four hours and the cabinets were cleaned at that time. The tenant testified that the unit was not clean at the start of the tenancy.

The tenant testified that she did return the keys to the landlord's office and handed them over to a woman called [name withheld]. The tenant testified that she did this on October 31, 2014.

The tenant testified that she did not break any cabinets in the unit and the landlord did not provide the tenant with pictures of damaged cabinets. The tenant therefore disputed the landlord's claim for labour costs and ferry costs.

The tenant testified that she did agree in writing the landlord could keep \$10.00 from the security deposit and \$160.00 from the pet deposit for pet damage. The tenant seeks to recover the balance of the security and pet deposit.

The landlord testified that as landlords they would never have rented a unit to the tenant if it was not clean or had anything broken. The landlord testified that the tenant got the same evidence package as the Arbitrator and all the photographs were contained within it. The cabinets were held together by tape and the tenant's boyfriend was known to be violent. The tenant told the landlord her boyfriend was banned from the island by the police. There were three police incidents recorded between the tenant and a visitor which the landlord believes was her boyfriend.

The tenant testified that her boyfriend did get loud and out of sorts and he did break the window which the tenant then replaced. The tenant disputed that the cabinets were taped up or broken by her or her boyfriend and testified that she does not recall telling the landlord that her boyfriend had been banned from the island.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for damage; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or

contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The landlord is required to complete a move in condition inspection report at the start of the tenancy. The purpose of completing this report with the tenant is to provide evidence of the condition of the rental unit at the start of the tenancy to determine, what if any, damages were caused during the tenancy. The tenant has testified that she did not cause damage to the rental unit during the tenancy other than a window which was replaced by the tenant. The landlord has provided a move out condition inspection report and photographic evidence showing the condition of the rental unit in October, 2014. When one person's testimony contradicts that of the other then the burden of proof falls to the landlord to show that the rental unit was in a good condition at the start of the tenancy. The landlord has provided a letter from the office manager who conducted the walk through inspection of the unit at the start of the tenancy; however, this letter has not been sworn before a notary and the landlord did not ask the office manager to attend the hearing to give evidence under oath or submit to cross examination. I can therefore place little weight on this letter as evidence regarding the condition of the rental unit at the start of the tenancy.

It is therefore my decision that the landlord has not met the burden of proof in this matter concerning the damages to the unit that they were caused by the tenant's or the tenant's guest's actions or neglect during the tenancy. The landlord's claim for damages to blinds, the lights, the kitchen cabinets and for the landlord's labour costs cannot succeed and is therefore dismissed.

However, a tenant is required to shampoo or steam clean the carpets after a tenancy of more than a year especially if the tenant has pets which are not caged. The tenant agreed she had not cleaned the carpets and I find therefore the landlord is entitled to recover the amount of \$85.00 for carpet cleaning.

With regard to the landlord's claim for two new keys; the landlord testified that the keys were not returned at the end of the tenancy. I have reviewed the inspection report and there appears to be initials against the key section and it states two keys. It also states that two keys were returned and they do not know what they are for. I must deduce from this evidence that the tenant did not return the keys to the rental unit but rather two other keys. I therefore uphold the landlord's claim to recover **\$10.00** for the keys and **\$15.00** for his labour costs in getting the keys cut.

Sections 23(4), of the *Act* require a landlord to complete a condition inspection report at the beginning of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in, I find the landlord contravened s. 23(4) of the *Act*. Consequently, s. 24(2)(a) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

However, the tenant has agreed in writing that the landlord may retain the amount of **\$170.00** from the security and pet deposit; I therefore find the landlord may keep this amount from the deposits.

S. 38(4)(b), 67 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security and pet damage deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the landlord to keep a further amount of \$110.00 from the security deposit to compensate him for the carpet cleaning and keys. I am also satisfied from the evidence before me that the tenant only paid a pet deposit of \$240.00.

The tenant is entitled to a Monetary Order to recover the balance of the security and pet deposit pursuant to s. 38(6)(b) of the *Act* as follows:

Carpet cleaning and keys	\$110.00
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Amount tenant previously agreed the landlord could retain from security and pet deposits	\$170.00
Less security and pet deposits	(-\$665.00)
Total amount due to the tenant	\$385.00

As both parties claims have some merit I find each party must bear the cost of filing their own applications.

### Conclusion

For the reasons set out above, I grant the tenant a Monetary Order pursuant to Section 38(6)(b) of the *Act* in the amount of **\$385.00**. This Order must be served on the landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the landlord fails to comply with the Order.

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: June 25, 2015

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Residential Tenancy Branch



