



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, MND, MNSD, FF

### Introduction

This hearing dealt with a landlord's application for an Order of Possession for landlord's use of property; a Monetary Order for damage to the rental unit; and, authorization to retain the tenant's security deposit and pet damage deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord had provided receipts to the Residential Tenancy Branch as evidence for this proceeding but had not provided the tenant with copies of the receipts. The landlord was provided the opportunity to describe the receipts orally during the hearing.

I also heard that the tenant had already vacated the rental unit when the landlord filed this application. Accordingly, it was unnecessary to further consider the landlord's request for an Order of Possession.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation as claimed for cleaning and damage?
2. Is the landlord authorized to retain the security deposit and pet damage deposit?

### Background and Evidence

The tenant was originally provided occupancy of the rental unit in June 2011 as a sub-tenant under a tenancy agreement with a former tenant. The sub-tenancy ended and a tenancy formed between the tenant and the landlord in October 2011. The tenant's monthly rent was \$1,200.00 payable on the 1<sup>st</sup> day of every month. The tenant paid a security deposit of \$600.00 and a pet damage deposit of \$200.00. The landlord did not prepare a move-in inspection report but relied upon photographs taken during the

previous tenancy. The subject tenancy ended September 30, 2014. The landlord did not prepare a move-out inspection report but the landlord took photographs of the rental unit on October 1, 2014 and the parties inspected the rental unit together on October 5, 2014.

The landlord seeks to retain the tenant's security deposit and pet damage deposit totalling of \$800.00 as compensation for cleaning and damage. Below, I have summarized the landlord's claims against the tenant and the tenant's responses.

### **Cleaning**

The landlord described the rental unit had been left dirty and messy by the tenant. Photographs taken by the landlord supported the landlord's description. The landlord provided a receipt indicating she paid \$145.00 to her cleaning lady.

The tenant was agreeable to compensating the landlord \$145.00 for cleaning.

### **Flea treatment**

The landlord stated that she and her maintenance man noticed fleas in the rental unit in October 2014 while the rental unit was undergoing repairs and maintenance. The landlord had the unit treated for fleas at a cost of \$75.00 which she seeks to recover from the tenant. The landlord had a report from a pest control company indicating the unit was treated for fleas on October 27, 2014.

The tenant stated that her dog does not have fleas and that she had not seen any fleas in the rental unit or on her dog during the tenancy. The tenant was not agreeable to paying for flea treatment.

### **Damage to walls**

The landlord seeks compensation for damage to the walls that required patching and painting. The landlord provided a receipt indicating she paid \$800.00 for "fix and painting" on November 22, 2014. The landlord testified that the unit was last painted in 2011 by the former tenant. The landlord testified that the previous tenant did perform maintenance tasks for her in the rental unit.

The landlord pointed to photographs of wall damage that were from:

1. A closet rod and shelf being moved upwards.
2. Paint in the den being rubbed off of one wall.
3. Holes where a shelf had been installed over the computer desk in the den and then removed by the tenant.

The landlord was of the position that all of this damage occurred during the subject tenancy.

The tenant testified that she did not move the closet rod and shelf and that it was like that when she moved in. The tenant suggested that it was most likely the previous tenant who moved the closet rod and shelf as he did work on the unit. The tenant pointed to one of the landlord's "before" photographs taken during the previous tenancy that shows the previous tenant used a higher and a lower closet rod in the closet.

The tenant testified that the wall in the den that had paint missing was like that when she moved in and that was from the previous tenant leaning back in his office chair.

The tenant testified that the previous tenant had installed the shelf over the computer desk and that he left the desk and shelf in the den for her. The tenant acknowledged that she took the desk and shelf when her tenancy ended.

### **Other damage**

The landlord attempted to introduce evidence with respect to damage to the blinds. I noted that the landlord had made no mention of damage to the blinds in filing her application and the landlord acknowledged that she had not sought compensation from the tenant for blind damage. Therefore, I did not permit further submissions on the matter of blind damage.

### **Analysis**

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of everything provided to me, I provide the following findings and reasons.

### **Cleaning**

Since the landlord had a cleaning receipt for \$145.00 and the tenant was agreeable to paying the landlord \$145.00 for cleaning, I award the landlord \$145.00 for cleaning.

### **Flea treatment**

Considering the tenant had a dog in the unit for a number of years and that the tenant did not produce evidence to demonstrate she had her dog treated for fleas or had the rental unit for fleas, I accept on the balance of probabilities that the flea treatment that was performed in October 2014 was attributable to the tenant having a pet in the rental unit. I find the landlord's testimony that the treatment cost \$75.00 to be reasonable and I award the landlord \$75.00 for flea treatment.

### **Damage to walls**

The landlord bears the burden to demonstrate the condition of the rental unit before this tenancy commenced. That is one of the primary reasons for completing a move-in inspection report as required under the Act.

In the absence of a move-in inspection report, and considering the tenant provided a reasonable explanation for the reason for the wall damage in the closet and where the computer chair rubbed against the den wall, I find the disputed verbal testimony concerning the closet rod and the damaged wall in the den from the computer chair is insufficient for me to conclude this damage was caused during this tenancy. Therefore, I make no award to the landlord for such damage.

With respect to the three holes in the den wall created by the shelf over the computer desk, I find the tenant responsible for repairing that damage. Although the shelf was installed by the previous tenant, the tenant agreed to accept the furniture from the previous tenant for her own use during her tenancy and thereafter as evident by her taking the furniture with her when she moved out of the rental unit. I find the tenant responsible for the costs associated to patching the holes but only a very small portion of the cost to repaint the unit since the damaged area was relatively small and the interior paint was nearing the end of its useful life at the end of the tenancy.

Awards for damages are intended to be restorative. Accordingly, where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

Residential Tenancy Branch Policy Guideline 40 provides that interior paint has a useful life of approximately 4 years. Since this unit was last painted during the previous tenancy by the previous tenant, I find it likely the unit was painted before June 2011 since that is the month the tenant moved in as a sub-tenant. Considering the landlord had the unit painted in November 2014 the interior paint was approximately 3.5 years old at that time.

In light of the above, I find it appropriate to award the landlord a nominal award of \$50.00 for wall damage from the shelf in the den.

### **Filing fee and Monetary Order**

Since the landlord had limited success in this application I award the landlord one-half of the filing fee she paid for this application, or \$25.00

In total, the landlord has been awarded \$295.00 [\$145.00 for cleaning + \$75.00 for flea treatment + \$50.00 for wall damage + \$25.00 one-half of filing fee] by way of this decision. I authorize the landlord to deduct \$295.00 from the tenant's deposits and I order the landlord to return the balance of the tenant's deposits to her, which I calculate to be \$505.00, without further delay. In keeping with Residential Tenancy Policy Guideline 17: *Security Deposit and Set-Off* I provide the tenant with a Monetary Order in the amount of \$505.00 to ensure the landlord makes the payment as ordered.

### **Conclusion**

The landlord has been authorized to deduct \$295.00 from the tenant's deposits and the landlord has been ordered to return the balance of her deposits in the amount of \$505.00 to the tenant without further delay. The tenant has been provided a Monetary Order in the amount of \$505.00 to serve and enforce if necessary.

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 09, 2015

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Residential Tenancy Branch

