



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, an order to recover the filing fee, and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

### Preliminary Issues

The landlord has applied to retain the security deposit; however the matter has already been decided by another Arbitrator in a previous hearing between these two parties. As that issue clearly falls under the definition of Res Judicata, I dismiss that portion of the landlords' application.

The landlord stated that they had submitted several different evidence packages to the Branch but not to the tenant. The landlord stated that when they became aware the tenant was to have the same evidence as the Branch and the landlord themselves; they re-issue the documentation to the Branch and provided a copy of the documentary evidence to the tenant on June 8, 2015. The tenant confirmed receipt of this evidence.

The landlord confirmed that he received the tenants' documentary evidence on June 3, 2015. It was made clear that the tenant package submitted on June 3, 2015 and the landlord package dated June 8, 2015 is the only documentation that would be

considered for this hearing. Both parties indicated they understood and were content with that ruling.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background, Evidence

The landlord's testimony is as follows.

The tenancy began June 1, 2010 and ended on May 31, 2014. The tenants were obligated to pay \$1300.00 per month at the end of the tenancy. The landlord advised that the home is about 65 years old but was renovated in the summer of 2009. Condition inspection reports were not conducted in writing at move in or move out. The landlord stated that the tenant left the unit so dirty and messy, that it required extensive cleaning. The landlord stated that the unit also required it to be painted. The landlord stated that the carpets were full of stains and that there was a fly infestation in the suite.

The landlord stated that he and his wife spent an entire week cleaning the unit. The landlord stated that he hired a consultant; who advised that he paint it and put in laminate flooring. The landlord stated that his wife lost \$1000.00 in wages by conducting open houses. The landlord stated that he spoke to a lawyer about this matter and was informed he should deal with this on his own in Small Claims Court; which cost him \$500.00

The landlord stated that he incurred costs of \$5517.86 to clean the suite, paint the suite, legal fees to address this hearing, marketing fees to re-rent the unit, loss of revenue for the month of May 2014, his wife lost wages to conduct "open houses" to attempt to rent the unit, carpet cleaning, removal of junk, and miscellaneous costs for flooring and cleaning materials.

The tenant gave the following testimony:

The tenant stated that she adamantly disputes the landlords' entire claim. The tenant stated that this application is "retaliatory" for her filing an application for dispute resolution against the landlords and being successful. The tenant stated that the unit was left clean and undamaged. The tenant stated that the unit had usual wear and tear for someone who had lived there for four years and nothing beyond that.

The tenant stated that she doesn't feel she should bear the cost of "upgrading" the unit for the landlord. The tenant stated that she was assisting the landlord in attempting to re-rent the unit by posting ads on the internet and conduct showings. The tenant stated that the landlord directed her to stop advertising as he had hired a consultant and was choosing to upgrade to laminate flooring and new paint colour scheme. The tenant stated that she doesn't feel the outgoing tenant should pay to renovate for the new incoming tenant.

### Analysis

Section 67 of the Act states that when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. **To prove a loss the applicant must satisfy all four of the following four elements:**

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The landlord has not satisfied me of any of the above grounds as he is required to do. In the matter before me the landlord has submitted receipts of costs he incurred post tenancy. However, the landlord did not provide receipts to support their claim that the unit had been renovated in 2009, did not provide photos of the unit pre-tenancy or post tenancy, or a condition inspection report to reflect the condition of the unit. It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlords' entire claim is based on his allegation that the tenant left the unit so dirty and unsuitable for re-rental, but he failed to establish that. The landlord has not provided sufficient evidence to support any of his claims and I therefore dismiss his application in its entirety.

#### Conclusion

The landlords' application is dismissed 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: June 25, 2015

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Residential Tenancy Branch

