



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: MND, MNSD, FF  
Tenant: MNSD, FF

### Introduction

This hearing dealt with the cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant. While the landlord herself did not participate in the call she was in range of her agent.

At the outset of the hearing I noted that the landlord had originally sought a monetary order in the amount of \$966.00 but that the total amount of their claim based on their evidence and submissions was \$1,077.35. I advised the landlord that because their Application for Dispute Resolution was not actually amended the maximum claim I could consider was the original amount claimed of \$966.00.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to and cleaning of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act* (Act).

It must also be decided if the tenant is entitled to a monetary order for return of double the amount of the security deposit and pet damage 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 Act.

### Background and Evidence

The parties agree the tenancy began on February 1, 2012 as a month to month tenancy for the monthly rent of \$1,650.00 due on the 1<sup>st</sup> of each month with a security deposit of \$825.00 and a pet damage deposit of \$825.00 paid. The tenancy ended on October 31, 2014. The parties agree the landlord has returned to the tenant \$652.00 from the pet damage deposit and \$31.50 from the security deposit.

The landlord acknowledged in her written submission that she withheld \$172.00 from the pet damage deposit specifically for carpet cleaning and \$793.50 from the security deposit for the remaining repairs.

The landlord submits a move in condition inspection was not completed but the deck and flooring had just been refinished; the carpets cleaned; and the unit repainted (except for rooms the tenant wanted to do herself). The tenant submits that she agreed the deck had just been refinished and that some painting touch ups had been completed.

A copy of a move out condition inspection report and several photographs from the end of the tenancy were submitted by the landlord. The tenant confirmed that she provided her forwarding address to the landlord at the time of the move out condition inspection, (November 9, 2014).

The landlord submits the tenant caused the following damage:

- Chipped paint in entry way, hallway and stairwell;
- Damaged drywall an unattached towel rack in bathroom;
- Stained deck;
- Stained carpet;
- Broken dryer handle; and
- Missing smoke and CO<sub>2</sub> alarms.

The tenant submits that paint in the entry way, hallway and stairwell had chips at the start of the tenancy. She also acknowledges that when she was painting the bathroom she removed the towel rack. She states that when she went to try and reinstall the rack she was concerned about causing damage to the walls so she contacted the landlord and advised of the problem. She states that she asked the landlord to have it fixed and the landlord did not do so.

The tenant states that she was advised by the landlord at the start of the tenancy that dryer handled had been broken and previously repaired by the landlord's agent. She also states that there was no smoke or CO<sub>2</sub> alarms installed when she moved in.

The tenant acknowledges having pots on the deck but denies having anything that would leave a rust stain on the deck and suggests that the rust may have come through the finish that had not been removed prior to refinishing before the tenancy began.

In relation to the stained carpet the tenant submits that he had cleaned the carpets with a machine and non-toxic cleaners. I note the landlords did indicate that the carpets were wet at the end of the tenancy and there were noxious fumes while it was still wet. The landlord submits that even after cleaning the remained stains that they believed were the result of the tenant's dog.

The landlords also seek compensation for the tenant failing to adequately clean the stove including top and oven grills. The parties agree that during the move out condition inspection on November 9, 2014 that the tenant acknowledged the stove required cleaning and she started to clean it. The landlord submits that they had to continue cleaning the stove and spent 2 hours doing so.

The landlord seeks the following compensation for all of the items noted:

| Description   | Amount            |
|---|-------------------|
| Touch up paint (invoice provided)                               | \$260.69          |
| Repaint deck (invoice provided)                                 | \$200.00          |
| Repair drywall/towel rack and replace alarms (invoice provided) | \$179.66          |
| Clean stove (landlord's time – 2 hours at \$46.00)              | \$92.00           |
| Carpet cleaning (undocumented estimate)                         | \$172.50          |
| Repair dryer handle (undocumented estimate)                     | \$172.50          |
| <b>Total</b>  | <b>\$1,077.35</b> |

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

In order to establish a claim against a tenant that she has caused damage to the rental unit during the course of a tenancy that amounts to more than reasonable wear and tear, the landlord must provide sufficient evidence to establish the condition of the rental unit at both the start and the end of the tenancy.

As the landlord failed to provide any documentary evidence of the condition of the rental unit at the start of the tenancy I find the landlord cannot establish the condition at the start of the tenancy except for where the tenant agrees that the condition was such.

As the tenant disputes the condition of the rental unit at the start of the tenancy in regard to the need for painting; the condition of the carpet (ie. Any staining); the smoke and CO<sub>2</sub> alarms; and dryer handle, I find the landlord has failed establish that any of these damages occurred as result of the tenancy and I dismiss these portions of the landlord's claims.

However, based on the tenant's testimony I accept that the tenant is responsible for damage resulting from her removal of the towel rack in the bathroom; cleaning of the stove; and damage to the deck. Regardless of the tenant's testimony that she had nothing that would rust on the deck during her tenancy I find that the stains occurred during that time and she is therefore responsible for the repair.

As the landlord has provided a value of \$179.66 for the paint touch ups associated with the towel rack and installation of the alarms without a further breakdown I award the landlord a nominal amount of \$40.00 for repairs to the towel rack.

While I acknowledge the landlord has established the value of repainting the deck at \$200.00 through the submission of their invoice, I find that this amount is subject to a depreciated value based on the useful life of exterior painting found in Residential Tenancy Policy Guideline 40 of 8 years. As the deck was painting in the fall of 2011 and the tenancy ended in the fall of 2014 I discount the value of this work by 37.5% to a value of \$125.00.

And as to the cleaning of the stove, I accept that at the end of the tenancy the tenant failed to clean the stove and that she attempted to do so during the move out inspection. However, I also accept the landlord required additional cleaning based on their photographic evidence. As to the quantum for this cleaning I find \$46.00 per hour or \$92.00 in total to be exorbitant and grant the landlord \$30.00 in total for this cleaning.

As a result of the above, I find the landlord has established she is entitled to compensation in the amount of \$195.00.

Section 38(1) of the *Act* stipulates that 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.

From the tenant's testimony I find the landlord received the tenant's forwarding address on November 9, 2014 and as such was required to either return the deposits in full or file an Application for Dispute Resolution to claim against the deposits no later than November 24, 2014. From the landlord's Application I accept the landlord submitted her Application for Dispute Resolution on November 24, 2014. Therefore I find the landlord has complied with the requirements of Section 38(1) and the tenant is not entitled to double the amounts of the deposits.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$195.00** comprised of \$125.00 repairs to the deck; \$30.00 for stove cleaning; \$40.00 towel rack repairs.

I order the landlord may deduct the above amount from the balance of the security deposit currently held in the amount of \$965.50 in satisfaction of this claim. I grant a monetary order to the tenant for the return of the balance in the amount of **\$770.50**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As to the filing fees for both parties I grant that they are both entitled to \$25.00 of the \$50.00 fee as they were both only partially successful in their claims. As I award them both the same amount I note that they cancel each other out and I have not included them in the monetary 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 04, 2015

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Residential Tenancy Branch

