



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, MND, MNSD, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for

- a monetary order for damage to the rental unit pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Tenant JT spoke on behalf of the tenants as Tenant AV indicated her English was limited. Landlord LD spoke on behalf of the landlords as she indicated Landlord AJ's and HD's English are limited.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit as a result of the tenancy? Is the landlord entitled to recover the filing fee for this application?

Is the tenant entitled to return of all or part of their security deposit and have an order that the landlord comply with the *Act*? Is the tenant entitled to recovery of their filing fee for this application?

## Background and Evidence

This tenancy began June 2010 and, after a six month fixed term, it continued on a month to month basis. The rental amount of \$1600.00 was payable on the 14<sup>th</sup> of each month. The tenant vacated the rental unit on October 14, 2015 and provided no forwarding address to the landlord, according to the landlord. The tenant testified that, at a certain point, the tenant provided an address. In clarifying this testimony, Tenant JT testified that the address on their rental cheques could have been used to send mail. The landlord returned \$600.00 of the tenant's \$800.00 security deposit in person on October 26, 2014.

The landlord testified that at the end of her tenancy, the tenant did not clean the rental unit at all nor did she professionally clean the carpets. She also testified that she broke a garage door opener/fob. Both parties agreed that no condition inspection report was created with respect to this tenancy.

The landlord provided several photographs. Those photographs focus mainly on illustrating a dirty carpet with some minor stains. There are also photographs of the fob/garage door opener that the landlord testified does not work. There is nothing remarkable about the photographs of the fob. On cross examination by the tenant, the landlord was unable to decisively confirm when the photographs of the rental unit were taken.

The tenant testified that the garage door opener/fob was in working condition when she returned it to the landlord. The landlord acknowledged that she did not become aware of the issue with the garage door opener/fob until sometime later after the tenant had vacated the unit and returned the fob, when the next tenants notified her of the issue.

The tenant submitted that the cleaning bills are not reflective of cleaning to the rental unit at the end of the tenancy as the invoices for cleaning submitted as evidence by the landlord are dated five months after the end of the tenancy.

## Analysis

Section 67 of the *Act* establishes that if a landlord seeks to be compensated for damage or loss results from a tenancy, the landlord burden of proof to show that damage and any resulting loss. The Landlord first must prove the existence of the damage/loss, and also prove that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the tenant. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord has submitted some evidence with respect to her claim that the carpets were unclear at the end of the tenancy. The photographs submitted by the landlord reflect a minor level of damage. I accept the tenant's testimony that any lack of cleanliness on the carpets is likely a result of normal wear and tear after the course of a tenancy. I also note that the landlord was unable to provide either testimony or evidence to prove when the photographs of the rental unit were taken.

With respect to the non-working fob/garage door opener, the landlord presented no evidence, by way of report or illustration of some kind, to show that the fob does not work. Further the landlord has presented no evidence to prove that the fob does not work as a result of the actions of the tenants. To the contrary, the tenants testified that the fob worked when they provided it to the landlord. I accept the tenant's testimony that the fob was working to the best of their knowledge. I also note that the landlord conceded it was some time after the end of the tenancy before the new tenants advised that the fob was not working. There is insufficient proof, with respect to the fobs, that they were damaged or that they were damaged by the tenants.

I accept the tenant's submissions that the receipts for cleaning submitted by the landlord reflect a date several months after the tenants vacated the premises. It is imperative, in proving damages, that evidence and action be contemporaneous with the event. The fact that the cleaning was not undertaken in a timely fashion does not add credence to the landlord's claim for compensation as a result of damage or failure to clean by the tenants.

I find that the landlord has failed to show that damage as a result of action or inaction by the tenants caused monetary loss. Therefore, I dismiss the landlord's application for a monetary order for damage and I dismiss her application to recover the filing fee for her application.

The tenant testified that her application for an order that the landlord comply with the *Act* related directly to an order for return of her security deposit. The landlord testified that she continues to hold \$200.00 of the tenant's security deposit. Given my finding that the landlord has failed to prove damages, I find that the tenant is entitled to the return of the remaining portion of her security deposit.

Section 38(1) of the *Act* is relevant in these circumstances. The tenant requested that this section of the *Act* be considered in any award to the tenant. The *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit

in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, no forwarding address was provided by the tenant. While there is no evidence that the tenant has given the landlords written authorization at the end of this tenancy to retain any portion of his security deposit, the tenant did not meet her obligation in providing the landlord with a forwarding address to send the remainder of the deposit.

The landlord's right to claim against the tenant's security deposit had not been extinguished. Therefore, I do not find that the provision of Policy Guideline No. 17 (providing for the doubling of the deposit on return to the tenant) is applicable in these circumstances.

I find the tenant is entitled to recover the \$200.00 remainder of their security deposit from the landlord. As the tenant has been successful in her application, I find the tenant is entitled to recover the filing fee for this application.

### Conclusion

I order the landlord to return the remaining \$200.00 to the tenant. To reflect this order, I issue a monetary award for \$250.00, the amount owing to the tenant and the filing fee amount.

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: July 14, 2015

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Residential Tenancy Branch