



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company and the tenant attended the hearing. Each gave affirmed testimony and provided evidentiary material to the Residential Tenancy Branch and to each other prior to the commencement of the hearing. The parties were given the opportunity to question each other respecting the testimony and evidence, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for liquidated damages?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord's agent** testified that this fixed-term tenancy began on July 15, 2014 and was to expire after 1 year, ending on July 31, 2015, following which the tenancy would revert to a month-to-month tenancy. A copy of the tenancy agreement has been

provided, and the tenant paid a pro-rated amount for the first month. The tenant moved out of the rental unit earlier, having paid rent to the end of February, 2015. Rent in the amount of \$1,475.00 per month was payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears. On July 11, 2014 the landlord collected a security deposit from the tenant in the amount of \$737.50 which is still held in trust by the landlord. The rental unit is a condominium unit within a strata complex.

The landlord's agent further testified that the parties had emailed back and forth about when the tenancy would end. An email dated December 23, 2014 from the tenant was accepted by the landlord's agent as 1 month's notice to end the tenancy effective February 28, 2015. The agreement was that the landlord would accept it as a notice to vacate the premises, and testified that the policy of the landlord company is to accept the 1 month notice to end a tenancy from a tenant, but if the lease term is broken, the tenant is liable to pay liquidated damages, but the landlord company would not claim future month's rent. The landlord claims \$725.00 and the tenancy agreement states:

"5. LIQUIDATED DAMAGES. If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$725.00 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated."

The rental unit was re-rented for a tenancy to begin on March 1, 2015, however the new tenants moved in early on February 26, 2015 and paid the landlord \$160.00 for the extra days, which the landlord has credited to the account of the tenant in this hearing. Therefore, the landlord's agent acknowledges owing to the tenant the \$160.00 as well as the security deposit of \$737.50.

A move-in condition inspection report was completed by the parties on July 15, 2014 and was signed by a landlord and by the tenant who agreed to the condition of the rental unit. The parties had discussions by email as to when the move-out condition inspection report would be completed, however the tenant was not available for any times suggested by the landlord's agent. The tenant authorized the landlord's agent to do the inspection in the tenant's absence in an email, which has also been provided, and a Notice of Final Opportunity to Complete Inspection Report was posted to the door of the rental unit on February 22, 2015. A copy has not been provided, however the landlord's agent testified that it scheduled the inspection for February 25, 2015. The

inspection was completed by the landlord's agent on February 25, 2015 on the same form as the move-in condition inspection, and a copy was sent to the tenant and provided for this hearing.

The rental unit required cleaning, and the landlord hired a cleaning company which cost \$90.00. A copy of the invoice has been provided and it shows 3 hours of cleaning and specifies items cleaned. The landlord claims that amount as against the tenant.

The tenant did not have the carpets cleaned at the end of the tenancy, and the landlord claims \$78.75, for which an invoice has been provided. The move-in portion of the inspection report shows a stain on the stairs at the commencement of the tenancy, however the landlord is not claiming for that. Further, the tenancy agreement provides that:

"23. CARPETS AND WINDOW COVERINGS. The tenant is responsible to periodic cleaning of carpets and window coverings provided by the landlord. While professional cleaning is recommended at all times, if the carpets and window coverings are new or professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy."

The landlord also claims the cost of replacing a flood-light bulb in the kitchen at an estimated cost of \$7.44.

The landlord received the tenant's forwarding address in writing on February 24, 2015.

**The tenant** testified that she purchased another unit within the strata complex and kept in touch with the landlord's agent about a possession date.

The tenant disagrees that the liquidated damages claimed by the landlord is not a penalty, and disagrees that it is related to the cost of re-renting. New tenants were pre-approved by the landlord and the unit was never advertised for rent. The new tenants wanted in earlier than the first of March and email correspondence provided confirms that. When the tenant tried to talk to the landlord's agents they said liquidated damages were costs for re-renting and strata costs for moving. The Strata Bylaws, a portion of which has been provided, states that there is a \$200.00 fee for moving in but none for moving out. There was no additional cost to the landlord because the landlord would have had to pay that amount for a new tenant at the end of this tenancy in any event. In one of the emails from the landlord's agent provided for this hearing, the tenant was given the impression that the security deposit would be returned, and then the landlord wanted to keep it for liquidated damages. The tenant was willing to work with the landlord asking what that money was going toward since there was no advertising

required and their response was that they didn't have to share that information with a tenant.

With respect to the move-out condition inspection, the tenant testified that due to work commitments she was unable to attend at the times suggested by the landlord, and the tenant suggested different times, but the landlord's agent didn't agree. The office is closed at 5:00 and the tenant works till 5:00 and the landlord's agent wouldn't make herself available. The tenant got frustrated and left the keys inside the rental unit prior to February 24, 2015. The keys also had a fob for that floor, so the tenant didn't see the Final Opportunity to Conduct a Condition Inspection; she had no access to that floor.

On the date of the move-out condition inspection, the tenant told the landlord that the tenant had cleaned the carpets but the landlord's agent said she wanted them professionally cleaned. The landlord's agent also sent an email to the tenant after the move-out condition inspection report was completed listing some items that required attention and the tenant asked her mother to go to the rental unit to take care of it. Several hours later the landlord's agent responded that it was too late because the new tenants were moving in the following day and she had hired someone to clean. The tenant had no opportunity to deal with it. The tenant has reviewed the photographs provided by the landlord and agrees that she forgot to clean out the lint trap in the dryer, but was quite shocked at a \$90.00 bill.

The tenant tried to be reasonable and left the rental unit clean, and denies the landlord's claims.

**In rebuttal**, the landlord's agent stated that the tenant is under the impression that turning over a rental unit doesn't cost, but it does, for paperwork, etc. The email where the landlord's agent mentioned return of the security deposit had nothing to do with liquidated damages. Some tenants pay that ahead of the move-out condition inspection. Further, the tenant moved out prior to the end of the term and the landlord had to pay the strata cost for a new tenant earlier than specified in the tenancy agreement.

### Analysis

I have reviewed the tenancy agreement and it is clear that the tenant agreed to pay liquidated damages in the amount of \$725.00 for breaching a material term of the tenancy agreement, which includes ending the tenancy early. The tenant relies on written confirmation from the landlord's agent that the tenant would get back the security deposit, and on the undisputed fact that no advertising was required to re-rent. The tenant sees it as a penalty as a result, which is contrary to the *Residential Tenancy Act*.

I have also read the emails provided by the parties, and I see nothing that indicates that the parties mutually agreed to end the tenancy earlier. I accept the testimony of the landlord's agent that the email speaking of return of the security deposit did not have anything to do with liquidated damages and that the company policy is to claim the liquidated damages but not claim loss of revenue for future months, even though the tenancy agreement states that the landlord has that right. The landlord has the right to claim liquidated damages if it's contained in the tenancy agreement, and the tenant is entitled to recovery of the security deposit. They are separate issues, and I find that the parties agreed to the pre-estimate of costs associated with re-renting. The landlord is not required to establish what those costs actually were because the parties agreed to the pre-estimated cost at the commencement of the tenancy. I find that the landlord has established a claim in the amount of \$725.00.

The *Act* also states that a landlord must return a security deposit in full to a tenant or make an application for dispute resolution claiming against it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. In this case, the landlord's agent testified that the tenant's address was received on February 24, 2015, and the landlord filed the application for dispute resolution on March 6, 2015, clearly within the 15 day period.

With respect to the landlord's claim for cleaning, the *Act* states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. I cannot accept the tenant's testimony that she had no opportunity to deal with the items that were found by the landlord's agent to be unacceptable, and that the tenant was going to have her mother attend to deal with them. What the tenant ought to have done was have an agent attend with the landlord's agent to conduct the condition inspection. I have reviewed the invoice of the cleaner, and find it is consistent with the move-out condition inspection, and I find that the landlord has established a claim for cleaning in the amount of \$90.00.

With respect to carpet cleaning, the landlord's agent testified that there was a stain on the carpet at the beginning of the tenancy. The tenancy agreement states: "...if the carpets and window coverings are new or professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy." I am not satisfied that professional cleaning was required at the end of the tenancy, nor am I satisfied that the carpets were new or professionally cleaned at the start of the tenancy. The carpets are obviously stained, and the landlord's application for a monetary order for carpet cleaning is dismissed.

The move-out condition inspection report shows that a light bulb in the kitchen was burned out and considering the estimate provided in the landlord's evidentiary material, I grant the landlord a monetary order in the amount of \$7.44 for its replacement.

In summary, I find that the landlord has established a claim for liquidated damages in the amount of \$725.00, general cleaning in the amount of \$90.00, and \$7.44 for a light bulb. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee, for a total of \$872.44. The landlord currently holds \$737.50 as a security deposit and \$160.00 as a credit to the tenant, for a total of \$897.50. I set off the amounts, and I order the landlord to return the sum of \$25.06 to the tenant forthwith.

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$737.50 security deposit and I order the landlord to return the sum of \$25.06 from the overpayment of rent collected to the tenant forthwith.

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 21, 2015

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Residential Tenancy Branch

