



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC MND MNSD OLC FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent and damages to the property;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) For a return of twice the security deposit pursuant to section 38;

### **SERVICE**

Both parties attended the hearing and each confirmed receipt of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that the tenant owes rent, damaged the property beyond reasonable wear and tear and the amount it cost to fix the damage? If so, what is the amount of the compensation and is the landlord entitled to recover filing fees also?

Is the tenant entitled to twice her security deposit refunded and to recover filing fees for the application?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The landlord had some trouble with his telephone and left and entered the conference three times; no evidence was heard while we waited for him to rejoin the conference each time. It is undisputed that the tenancy commenced in November 2013, that rent was \$800 a month and a security deposit of \$400 and a pet damage deposit of \$400 were paid. It is undisputed that the tenant paid rent for March 2013 and an extra \$100 at the end of March for she said she had trouble getting her moving truck until April 1, 2014. The landlord

said she actually did not remove all her stuff until April 11, 2014 and he claims rent for April 2014 in the amount of \$800. He made this Application on May 12, 2015.

The landlord also claims as follows:

- 1) \$100 for door change of the suite
- 2) \$50 for a lock set
- 3) \$400 for carpet
- 4) \$180 for shampoo (3 hours)
- 5) \$600 for cleaning
- 6) \$70 for a dumping fee
- 7) \$130 for a faucet repair
- 8) \$250 for repainting
- 9) \$5000 for a front fibreglass door

As evidence, the landlord provided photographs and a charge against the male tenant for 'uttering threats to cause death or bodily harm...and Mischief \$5000 or under. The landlord insisted this should be sufficient to prove cost. He said he had done the work himself so had no invoices. He said the house was brand new at the beginning of the tenancy so no condition inspection report was done.

The tenant disagreed. She said the house was at least 10 years old when they moved in according to a neighbour although some renovations had been done. She said the male tenant had not pleaded guilty to damage charges; he may have damaged a door because the landlord locked him out. The male tenant was evicted on March 21, 2014 and the female tenant said she was staying with him in a hotel from then until she vacated. She said she left on April 1, 2014 although she agreed she left a couch behind to be disposed of by the landlord. The landlord said the photographs illustrate she left a lot of garbage and left the unit very dirty. The tenant said the photographs were taken before April 1, 2014 and she cleaned afterwards with a friend. She said she put the keys in the landlord's mail box.

The tenant said she asked for her security deposit back in June 2014 in a letter but he did not respond and still has her security and pet damage deposits. She provided no documentary evidence of the letter or of providing her forwarding address in writing.

The parties invited me to examine a previous Decision in which the male tenant was evicted to support their evidence.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

Awards for compensation are provided in sections 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.

The onus is on each applicant to prove on a balance of probabilities their claim. I find the landlord's evidence credible that the tenant owes rent for April because she did not remove all her items until April 11, 2014. Section 26 of the *Act* provides that the tenant must pay rent when due. While the tenant claimed she vacated and removed her items by April 1, 2014, she did agree that she left a couch in the unit for she could not take it in the truck. Therefore, I find she did not give vacant possession to the landlord until April 11, 2014 so I find him entitled to recover \$700 in rent for April (\$800 - \$100 she paid him). I find him also entitled to recover dumping fees of \$70; the weight of the evidence is that he did have to dispose of the couch.

I also find him entitled to recover \$180 for shampooing the carpets. Although he provided no invoice, according to the Residential Policy Guidelines #1, it is the tenant's responsibility to shampoo carpets when vacating, especially if there are pets. The evidence is that the tenant had a pet and the tenant provided no evidence that she had shampooed the carpets herself or had it done. I also find the charge reasonable.

I find insufficient evidence to support the balance of his claim. He provided no invoices and said he did the work himself. However, I find even if he did the work himself, he should have had invoices for the materials e.g. \$5000 for a door. There is no condition inspection report done at move-in or move-out. I do not find the charge against the male tenant for 'mischief under \$5000' is evidence to support the landlord's damage claim as it does not set out damage or amount.

Although the landlord said the unit was brand new at move-in, I find it just as likely the home was over 10 years old as the tenant contended and age significantly affects the compensation awarded for replaced items according to Policy Guideline #40, for example, carpets are only assigned a useful life of 10 years.

The landlord claims for change of a door to the suite, for a lock set, for a new carpet, for a kitchen faucet, for repainting and for a new \$5000 fibreglass door. As he provided no invoices to support his claim or condition inspection report illustrating the tenants did this damage and the tenant denied responsibility for this damage, I find he did not meet the onus of proof and this portion of his claim is dismissed. Although he claims he cleaned for 30 hours, the tenant contended she cleaned it herself with a friend and it is equally likely that she did. Therefore I find the landlord did not meet the onus of proof on this item either and I dismiss his claim. I find it is equally likely that the landlord took the photographs of the unit while she was absent in

March (as she asserts) so I find they are not persuasive evidence of the condition of the suite when the tenant vacated. I dismiss this portion of his claim.

The tenant is claiming twice her security deposits refunded. I find she vacated April 11, 2014; although she states she provided her forwarding address in writing to the landlord in June 2014, she provided no evidence to support her statement. The previous Decision notes the parties discussed the security deposit in the hearing on March 21, 2014 and were told to disburse the deposits in accordance with the legislation. I find the landlord did not file his Application to claim against the deposits until May 12, 2015 but there is insufficient evidence that he was in receipt of the tenant's new address in writing before that. I find the tenant entitled to a refund of the security and pet damage deposits less the \$50 awarded in the prior hearing for the filing fee. Her deposits will be used to offset the amount owing.

**Conclusion:**

I find the parties entitled to monetary awards as calculated below. I find the landlord entitled to recover his filing fee; no fee was involved for the tenant.

Calculation of Monetary Award:

Rent for April 2014	700.00
Dumping fee	70.00
Shampoo carpets	180.00
Filing fee to landlord	50.00
Less tenant's security deposit (less \$50 for filing fee prior)	-350.00
Less tenant's pet damage deposit	-400.00
<b>Balance is monetary order to landlord</b>	<b>250.00</b>

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: September 17, 2015

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Residential Tenancy Branch

