



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; and for an Order permitting the landlord to keep all or part of the tenant's security deposit. The hearing was adjourned to allow additional time for the parties to provide evidence to the other party and was reconvened on today's date.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witnesses on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?

### Background and Evidence

The parties agreed that this month to month tenancy started on October 15, 2014. The tenancy ended on March 01, 2015. Rent for this unit was \$650.00 per month due on the first of each month. The tenant paid a security deposit of \$325.00 on October 15, 2014. The landlord did not complete a move in or a move out condition inspection report with the tenant at the start or end of the tenancy. The tenant provided a forwarding address in writing on March 01, 2015.

The landlord testified that the tenant withheld \$50.00 from her rent in February, 2015 because the tenant claimed she did not have enough hotwater. This was a unit for single occupancy yet the tenant allowed her two daughters to either live or stay with her for extended periods which may have resulted in them using the hotwater in the tank. The tenant did not notify the landlord in writing that there was a problem with the hotwater until the day she withheld a portion of her rent. The landlord seeks to recover the unpaid rent of \$50.00 and seeks to withhold this from the security deposit.

The landlord testified that the tenant had paid \$375.00 for her security deposit. The landlord returned \$75.00 to the tenant on March 15, 2015. The landlord retained and applied to keep the balance of the security deposit for the unpaid rent and for damages to the rental unit. The landlord testified that the tenant had kept cats in the unit which had caused fleas in the carpet. When the landlord went into the unit he suffered from flea bites on his legs. The landlord called another tenant into the unit to act as a witness and this person also suffered flea bites to her legs. The landlord called in a pest control company to disinfect the carpets and get rid of the fleas. The landlord referred to the invoice from that company detailing the treatment to the carpets and seeks to recover the costs incurred for this treatment of \$ 99.75.

The landlord testified that the tenant should have had the carpets professionally shampooed or steam cleaned at the end of the tenancy because the tenant had cats. The tenant failed to do so and the landlord had to hire a steam cleaner and cleaned the

carpets himself. The landlord seeks to recover the costs incurred to hire the steam cleaner, the tools and the stain remover at a cost of \$44.11. The landlord testified that the carpets were cleaned by the previous tenant prior to this tenancy starting. The previous tenant did not provide a receipt showing the carpets had been cleaned but the landlord had heard a machine running from his unit upstairs.

The landlord testified that the tenant had left a large hook screwed in the wall. This hook had to be removed by the landlord, the hole repaired and the area repainted. The landlord seeks to recover the cost involved for this work of \$56.00.

The landlord calls his witness DH who was the neighbour of the tenant. The witness testified that when the landlord asked her to come into the tenant's unit the day after the tenant moved out the witness's legs were covered in flea bites. The witness testified that she also let the man into the unit to treat the carpets for fleas and that man also got fleas on him and told the witness there were fleas in the carpet.

The tenant's agent cross examined the witness and asked the witness to describe how her legs were covered in fleas. The witness responded that when she walked into the unit, fleas covered her legs and bit her. She has an allergy to flea bites. The tenant's agent asked the witness how long after the tenant moved out did the witness go into the unit. The witness responded the next day.

The tenant's agent disputed the landlord's claims. The tenant's agent testified that the tenant withheld \$50.00 from her rent because she had issues with her hot water. The tenant's agent testified that he was at the tenant's unit every other weekend to help her because she was disabled and he witnessed water pressure issues and a lack of hot water. The tenant's agent disputed that the tenant's daughters lived with their mother but agreed they did visit her regularly. The tenant's agent is unaware if the tenant put anything in writing to the landlord concerning the hotwater issues but testified that the tenant did inform the landlord verbally.

The tenant's agent disputed the landlord's claim that the carpet had fleas. The tenant's agent testified that he suffered no flea bites and his young daughter who visited would play on the carpet and suffered no flea bites. The tenant's agent testified that when the tenant moved into the unit the previous tenant had left a great deal of belongings in the unit which the tenant's agent and others had to move out. The tenant's agent disputed that the previous tenant could have cleaned the carpets with all that stuff still in the unit. The tenant's agent testified that the tenant and her daughter steam cleaned the carpets twice at the end of the tenancy with their own steam cleaner.

The tenant's agent disputed the landlord's claim concerning the hook in the wall. The tenant's agent testified that this hook was in place at the start of the tenancy and was not put there by the tenant. The tenant had a disability which prevented the tenant from lifting her right arm and she could not have physically put this hook in the wall.

The tenant's agent testified that at the end of the tenancy the landlord did a walk through with the tenant's agent. The tenant's agent asked the landlord if the tenant needed to sign anything and the landlord said no everything was good. The landlord refused to return the security deposit at that time.

The tenant's agent calls their witness SC. SC is the tenant's daughter. The witness testified that she used to come and visit her mother and there was often no water pressure or hotwater in the shower or sink. This happened a few times a week. The witness testified that she saw the carpets being steam cleaned by her sister and her mother and they did them a few times.

The landlord cross examined the witness and asked how the neighbour saw the witness and her sister there a lot if they only stayed a few times. The witness responded that her sister lived in Edmonton and when she was back she stayed with a friend. The witness went to her mother's three or four times a week and stayed there when she was not in school. The landlord asked the witness if there is a receipt for carpet cleaning. The witness responded that there is not a receipt as they used their own carpet cleaner. The

landlord asked the witness if he has seen her there all the time staying with her mother. The witness responded not all the time but she has stayed there multiple times. The landlord asked if the tenant got written permission to have guests stay at the unit for extended times. The witness responded no they were only there visiting.

The landlord cross examined the tenant's agent and asked if the tenant's agent had put the hook in the wall. The tenant's agent responded and testified that he did not it was there when the tenant moved in.

The tenant's agent cross examined the landlord and asked why would the tenant's visitors have to have written permission to stay at the unit. The landlord responded that a guest or visitor can stay temporarily but if it is for a longer period then written permission must be gained.

The landlord recalls his witness DH. The landlord asked his witness how often she saw the tenant's daughters at the unit. The witness testified that she saw one daughter their everyday and heard them arguing and swearing at night. It was so bad she had to go to the tenant's unit and ask them to stop. Even if the tenant went out in her wheelchair the tenant's daughter was still in the unit as the witness saw and heard her. From October, 2014 to March, 2015 the tenant's daughter was in the unit at least five days a week.

The tenant's agent disputed this and testified that this daughter of the tenant stayed with him at least three nights a week.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for unpaid rent I refer the parties to s. 26 of the *Act* which states:

*26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, even if there was an unresolved issue with the hotwater the tenant is not entitled to withhold any portion of her rent. The tenant's recourse would have been to have put any issues in writing to the landlord with a request to have this investigated and repaired within a reasonable time frame. If the landlord did not do so the tenant could have then filed an application for an Order for the landlord to make repairs. Consequently, I find the landlord has established a claim to recover unpaid rent of **\$50.00** from the tenant.

With regard to the landlord's claim for flea treatment to the carpet; I am satisfied from the evidence before me that there was an issue with fleas in the carpet and the invoice provided from the pest control company indicates that the carpet in two rooms was treated for fleas. Consequently, I find the landlord has established a claim for **\$99.75**.

With regard to the landlord's claim for carpet cleaning; the landlord is required to ensure the carpets are provided in a clean condition at the start of the tenancy. The landlord testified that he heard the previous tenant cleaning the carpets but has provided insufficient evidence to support this. The tenant's agent and witness both testified that the tenant steam cleaned the carpets at the end of the tenancy. There is no provision under the *Residential Tenancy Act (Act)* that states the tenant must have the carpets professionally cleaned only that the unit must be left reasonably clean. The Residential Tenancy Policy Guidelines #1 states that the tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises. There is no mention that this must be done professionally.

I find the landlord has insufficient evidence to meet the burden of proof that the carpets were cleaned at the start of the tenancy or that the tenant failed to steam clean or shampoo the carpets at the end of the tenancy. Consequently, this section of the landlord's claim for \$44.11 is dismissed without leave to reapply.

With regard to the landlord's claim for the removal and repair of the wall where a hook was situated; the landlord has the burden of proof to show this hook was put into the wall by the tenant. The tenant's agent testified that the hook was in place when the tenant moved into the unit and therefore the tenant cannot be held responsible for any repair to the wall. The landlord failed to do the move in condition inspection report at the start of the tenancy as required under s. 23(4) of the *Act*. Had the landlord completed this inspection report it would have been documented that the hook was there or not. In this matter it is one person's word against that of the other and without further corroborating evidence from the landlord I must find the landlord has insufficient evidence to meet the burden of proof that the tenant put the hook in the wall. Consequently the landlord's claim to recover costs of \$56.00 to repair the wall is dismissed without leave to reapply.

I Order the landlord to keep the following amount from the security deposit. The balance of the security deposit must be returned to the tenant:

|   |                 |
|---|-----------------|
| Unpaid rent                                 | \$50.00         |
| Flea treatment                              | \$99.75         |
| <b>Total amount awarded to the landlord</b> | <b>\$149.75</b> |
| Security deposit                            | \$325.00        |
| Amount already returned to the tenant       | \$75.00         |
| Amount held in trust by the landlord        | \$250.00        |
| <b>Amount to be returned to the tenant</b>  | <b>\$100.25</b> |

Conclusion

For the reasons set out above, I grant the landlord a monetary award of **\$149.75**. The landlord is entitled to retain this amount from the security deposit.

The balance of the security deposit must be returned to the tenant. I grant the tenant a Monetary Order pursuant to Section 38(6)(b) of the *Act* in the amount of **\$100.25**. This Order must be served on the landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the landlord fails to comply with the 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: October 09, 2015

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Residential Tenancy Branch



