



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF  
DRI, MNDC, MNSD, OLC

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for damage to the unit, site or property; 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. The tenant's application disputes an additional rent increase; seeks a monetary order as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord return the security deposit or pet damage deposit; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The landlord and the tenant attended the hearing. Each gave affirmed testimony and provided evidentiary material in advance on the hearing. The parties were given the opportunity to question each other respecting the evidence and testimony provided, 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?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established that rent has been increased in excess of the amount permitted under the *Residential Tenancy Act* and the regulations?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for services agreed to but not provided?

- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on April 1, 2015 and ended on September 30, 2015. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided which specifies that rent in the amount of \$1,000.00 per month was payable on the 1<sup>st</sup> day of each month, and there are no rental arrears. The landlord is a tenant of the entire house, and sublets the basement suite, which was the rental unit occupied by the tenant.

The tenancy agreement also specifies that the following services and facilities are included: Water; Electricity; Heat; Stove and oven; Refrigerator; Carpets; Basic Cablevision; Laundry; Garbage collection; Parking for 2 vehicles; Wi-Fi.

However, the landlord testified that the tenant had roommates from time to time and the parties had a verbal agreement that the tenants would pay an additional \$10.00 each for Wi-Fi because the usage charges went up. The tenant stopped paying for it.

A move-in condition inspection report was completed at the beginning of the tenancy, a copy of which has been provided, but no move-out condition inspection report was completed at the end of the tenancy. The landlord testified that she called the tenant to schedule it for October 1, 2015 and the tenant said perhaps at 4:00, but the tenant didn't show up. On October 3, 2015 the tenant attended to do the inspection, but after being there for a very few minutes stated that he wanted to talk to his roommate and left. The landlord could not reach the tenant after that, and on October 13, 2015 the landlord served the tenant personally with a Final Notice to Conduct Condition Inspection, which scheduled the inspection for either October 14 or 15. The tenant didn't show up or contact the landlord to arrange a different time, and the move-out condition inspection report was not completed.

The rental unit was not left reasonably clean, and the landlord paid \$140.00 for a cleaning service; \$79.04 for cleaning supplies and \$61.58 for the rental of a steam cleaner for the carpets. The tenant also left numerous items behind and a list has been provided. The landlord claims an additional \$20.00 for the landlord's time to remove the items.

The landlord received the tenant's forwarding address in writing on October 11, 2015 which was found in the landlord's mailbox.

The landlord has provided a Monetary Order Worksheet setting out the landlord's claims: \$140.00 for suite cleaning services; \$79.04 for cleaning supplies; \$61.58 for rental of a steam cleaner for the carpets; \$20.00 for removal of the tenant's unwanted items; and \$50.00 for recovery of the filing fee; for a total of \$350.62.

**The tenant** testified that Wi-Fi was included in the rent, but the landlord then wanted the tenant and roommate to pay an additional \$60.00, which they did even though they didn't think it was right. Then the tenant told the landlord the tenant would get his own Wi-Fi and did so but still paid the landlord the additional \$10.00 each per month. The tenant is not sure when the tenant's Wi-Fi was connected but believes it was about 4 months after moving in.

The tenant placed a note in the landlord's mailbox on October 10, 2015 which contained the tenant's forwarding address in writing and waited 15 days before filing the application for dispute resolution. The landlord has not returned any portion of the security deposit and the tenant claims double the amount, or \$1,000.00.

With respect to the landlord's claim for cleaning, the tenant testified that at the beginning of the tenancy the floors were dirty, there was mold in the shower, and the tenant ought not to be required to pay for pre-existing damages. The tenant wiped everything down and vacuumed at the end of the tenancy.

Also, furniture was in the rental unit at the beginning of the tenancy belonging to the landlord, and the landlord said it was free but that the tenant had to take it with him when the tenant moved out. The only items the tenant left behind that belonged to the tenant were a broken desk, clothing and weights. The rest of the list provided by the landlord are items not belonging to the tenant.

The tenant denies the landlord's claim and has provided a Monetary Order Worksheet claiming: \$1,000.00 for double the amount of the security deposit and approximately \$240.00 for unnecessary Wi-Fi payments; for a total of approximately \$1,240.00.

### Analysis

Where a party makes a monetary claim against another party, the onus is on the claiming party to establish the claim. The parties have a written agreement that clearly states that Wi-Fi is included in the rent. Although I don't find that to be an unlawful rent increase, I am satisfied that the tenant has established that the landlord ought to have

been paying for it throughout the tenancy. However, the tenant was not able to provide any evidence or testimony with respect to how much the tenant paid for Wi-Fi or paid the landlord for it, and therefore, I find that the tenant has failed to establish the claim.

Also, the *Residential Tenancy Act* specifies 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. The *Act* places the onus on the landlord to ensure that they are completed, and where a tenant has been given at least 2 opportunities to complete the inspections and fails to participate, the landlord may complete the inspection in the absence of the tenant. If the landlord fails to do so or provide the tenant with at least 2 opportunities to schedule the inspection, the landlord's right to claim against the security deposit is extinguished. Where the tenant fails to participate after being given at least 2 opportunities by the landlord to schedule the inspection, the tenant's right to claim against the security deposit is extinguished.

### **Consequences for tenant and landlord if report requirements not met**

**36** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [2 opportunities for inspection],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

In this case, the tenant attended to complete the inspection after moving out but didn't remain in attendance, and the landlord didn't finish completing the report or send a copy to the tenant. Therefore, I find that both parties have failed to comply with the *Act*, and the right of both parties to claim against the security deposit is extinguished.

I have reviewed the move-in condition inspection report which I accept as evidence of the condition of the rental unit at the beginning of the tenancy, and it shows a small dirty area on the living room floor and dirty tub/shower and carpet in the master bedroom. A

tenant is not required to leave a rental unit in a pristine condition that a landlord may want for future tenancies. That is a landlord's responsibility. A tenant is required to leave the rental unit reasonably clean and undamaged except for normal wear and tear. The tenant testified that he wiped things down and vacuumed, and I have no reason to disbelieve that. Further, a tenant is expected to have carpets cleaned at the end of a tenancy if the tenant resides in the rental unit for 1 year or longer, or if the tenant had pets that were not kept in a cage. In this case, there is no evidence of a pet and the parties agree the tenancy lasted from April 1 to September 30, 2015, clearly less than a year.

Considering the evidence, I find that the landlord has failed to establish that the tenant failed to comply with the tenancy agreement or the *Act* by failing to leave the rental unit reasonably clean and the landlord's application for suite cleaning, cleaning supplies and carpet cleaning are dismissed. However, the tenant admitted to leaving unwanted items at the rental unit, some of which belonged to the tenant, and I find that the landlord's claim of \$20.00 for removal of those items is reasonable.

With respect to the security deposit, the landlord testified that she received the tenant's forwarding address in writing on October 11, 2015, and the landlord's application for dispute resolution was filed on October 20, 2015. Having found that the right of both parties to claim against the security deposit is extinguished, I also find that since the tenant breached first by failing to remain in attendance to complete the move-out condition inspection report, I find that doubling the security deposit is not appropriate or sanctioned by the *Act*.

I order the landlord to keep \$20.00 of the security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the tenant for the difference in the amount of \$480.00.

Since both parties have been partially successful with the application, I decline to order that either party recover the filing fee.

The tenant did not lead any evidence with respect to the application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, and I dismiss that portion of the tenant's application.

### Conclusion

For the reasons set out above, the tenant's application disputing an additional rent increase is hereby dismissed.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$480.00.

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: January 22, 2016

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Residential Tenancy Branch

