



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Omaxwell Realty - Property Management Division  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR MNSD MNDC FF

### Introduction

This hearing dealt with monetary applications by the tenant and the landlord. Both the landlord and the tenant participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?

Is the landlord entitled to monetary compensation as claimed?

### Background and Evidence

The tenancy began on September 1, 2014 as a fixed term to end on August 31, 2015. The tenant and the landlord initialled the boxes indicating that at the end of the fixed term the tenancy would end and the tenant would move out. Rent in the amount of \$2,300.00 was payable in advance on the first day of each month. At the outset of the tenancy, the tenant paid the landlord a security deposit of \$1,150.00 and a pet deposit of \$300.00. The landlord submitted a copy of a move-in inspection that was signed by the landlord's agent and the tenant's sister.

Before the end of the fixed term, the landlord contacted the tenant regarding the possibility of entering into another fixed term of six months. The tenant chose not to sign the new tenancy agreement and moved out of the rental unit on August 31, 2015. On

that date the landlord and the tenant carried out a move-out inspection and the tenant provided her forwarding address in writing on the bottom of the condition inspection report.

### *Landlord's Claim*

The landlord stated that the tenant only told them two weeks before the end of the tenancy that she was moving out. The landlord stated that they therefore suffered lost income of \$6,900.00. The landlord acknowledged that they did advertise to re-rent the unit for a higher rent than the tenant's rent. The landlord has also claimed the pet deposit of \$300.00, on the basis that the tenancy agreement indicates the pet deposit is non-refundable.

The landlord stated that when the tenant vacated, the rental unit required repairs, painting, and cleaning. In addition to lost revenue and the pet deposit, the landlord has also claimed the following amounts:

- 1) \$456.33 for damaged blinds;
- 2) \$190.00 for painting;
- 3) \$75.60 for locksmith services, as the tenant did not inform the landlord that she was moving and then it appeared that she had moved out;
- 4) \$105.00 for carpet cleaning;
- 5) \$246.50 for removing cat hair from the heating ducts; and
- 6) \$60.00 for cleaning the oven and baseboards.

The landlord provided invoices, receipts and photographs to support their claim. The landlord's witness, who cleaned the oven and baseboards for the landlord after the tenancy, stated that she had seen the blinds before the tenant moved in and they were not damaged, but they were quite damaged at move-out.

The tenant responded to the landlord's claim as follows. The tenant stated that she was not willing to sign for a six-month term, and she therefore decided to move out at the end of the first fixed term.

The tenant stated that she did not appoint her sister to act on her behalf and do a move-in inspection with the landlord; she only asked her sister to pick up the keys. The tenant stated that she had no idea a move-in inspection was done.

The tenant stated that the landlord changed the locks before she had fully moved out, and therefore she should not be responsible for the cost of changing the locks.

The tenant stated that the blinds were in the same condition at the end of the tenancy as they were at the start of the tenancy, and the landlord added the comment about the blinds after the tenant had signed the move-out inspection.

The tenant stated that the landlord's agent told her about the leftover paint in the closet. The tenant stated that as soon as she saw that the paint did not match the walls, she told the painters to stop.

The tenant stated that she did not do professional carpet cleaning because her tenancy was for less than a year. The tenant stated that the invoice for duct-cleaning said nothing about cat hair, and she did not think she should be fined for regular duct maintenance.

#### *Tenant's Claim*

The tenant claimed recovery of the pet deposit and double recovery of the security deposit.

The tenant claimed \$3,600.00 for loss of quiet enjoyment, at \$300.00 per month for 12 months. The tenant stated that the rental unit required repairs that the landlord took several months to address, and the tenant ended up doing some repairs herself. The tenant submitted that the landlord and the management company constantly intruded on her privacy with inspections, phone calls, texts, demands, emails and surveillance.

The tenant also claimed for the following:

- 1) \$592.20 for moving expenses, due to the landlord not complying with the contract;
- 2) \$86.05 for mail forwarding;
- 3) \$200.00 for a move-in fee;
- 4) \$158.86 for moving supplies;
- 5) \$124.95 for six months of renting a post office box, because she feared the management company and the landlord having her address; and
- 6) \$300.30 for removal of her TV and repairs to the shower audio system.

#### Analysis

#### *Landlord's application*

The landlord is not entitled to lost revenue. The only valid tenancy agreement indicated that the tenancy was for a fixed term ending on August 31, 2015, and it was therefore not required for the tenant to give the landlord any notice to vacate.

The landlord may not retain the pet deposit outright simply because they created a term in a tenancy agreement stating they were entitled to do so. That agreement was not signed by the tenant, and even if it had been, the landlord cannot enforce a term such as this that is contrary to the Act.

I find that the landlord is not entitled to compensation for the blinds. The tenant's evidence shows that the landlord added the information about the blinds to the condition inspection report after the tenant signed it. I accept the tenant's evidence that she did not appoint her sister as agent to carry out the move-in inspection and sign the condition inspection report on her behalf. Further, the move-in condition inspection report is not at all thorough, and provides little evidence of the condition of any of the items. I accept the tenant's testimony that the blinds were damaged gradually over the course of the tenancy. I do not accept the testimony of the landlord's witness that the blinds were "quite damaged" at the end of the tenancy, as the photographs do not show significant damage and the landlord did not make note of the damage until after completing the move-out inspection.

I do not accept the landlord's claim for painting. It is clear from the tenant's evidence that she was informed that the paint in the closet was the paint that had been used previously. The landlord could have just as easily made the same mistake the tenant did and started painting with the leftover paint, before realizing the colours no longer matched.

I do not accept the landlord's claim for the keys. The landlord was aware that they did not have a new tenancy agreement with the tenant, and they were also aware that the fixed term would end on August 31, 2015. The tenant had the right to retain access to the unit until the end of the tenancy.

I find that the landlord is entitled to compensation of \$105.00 for carpet cleaning. I do not accept the tenant's argument that she was not responsible for carpet cleaning because her tenancy was for less than one year. The tenancy was for one full year, according to the tenant's own argument that she ought to have been able to use her key to enter the rental unit any time up to August 31, 2015.

I find that the landlord is entitled to compensation of \$246.50 for duct cleaning. I accept the landlord's evidence that the ducts contained cat hair from the tenant's cat, and the ducts therefore required cleaning. I find that the tenant did not provide sufficient evidence to refute this portion of the landlord's claim.

I accept the landlord's evidence that the oven and baseboards required cleaning. I find that the tenant did not provide sufficient evidence to refute this portion of the landlord's claim. I therefore grant the landlord \$60.00 for cleaning.

### *Tenant's Application*

I will address the issue of the pet deposit in my final calculation of the monetary awards. In regard to the security deposit, I find that the tenant is not entitled to double recovery of the deposit, as the landlord made their application within the required time frame.

I find that the tenant has failed to provide sufficient evidence to support her claim for compensation for loss of quiet enjoyment. In the earlier months of the tenancy the tenant could have made an application for dispute resolution but she chose not to. It appears that the landlord did attempt to contact the tenant more than was necessary during the last month or two of the tenancy, but the tenant may have been able to reduce the amount of that disturbance if she had clearly informed the landlord that she was going to move out of the rental unit by August 31, 2015.

I find that the tenant is not entitled to costs associated with moving out. The tenant made the choice to vacate and in fact had signed the fixed-term tenancy agreement indicating that she would have to vacate. The tenant did not provide clear evidence of what the \$200.00 move-in fee was for. I do not accept the tenant's claim as reasonable that the landlord should be responsible for the tenant's choice to rent a post office box.

The tenant did not provide sufficient evidence to distinguish the portion of her claim regarding removal of her TV, for which she is entitled to no compensation, and the portion regarding hookup of the shower audio system, for which she may have been entitled to compensation. The tenant is therefore not entitled to this portion of her claim.

*Filing Fees*

As neither party's application was fully successful, I decline to award recovery of the filing fees to either party.

Conclusion

The landlord is entitled to \$411.50. I order the landlord to retain this amount from the security and pet deposits, and I grant the tenant an order under section 67 for the balance of the deposits, in the amount of \$1,038.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: March 29, 2016

---

Residential Tenancy Branch