



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BOUNDARY MANAGEMENT INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC MNSD FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for unpaid rent or rental loss as well as damage pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord attended and was given a full opportunity to make submissions with respect to this application. The tenant did not attend although the teleconference remained open until 1:45 pm for this hearing scheduled for 1:30 pm. The landlord testified that the tenant was served with this application for dispute resolution by registered mail on October 22 2015. The landlord provided a copy of the Canada Post receipt and tracking information. She testified that she received confirmation that the tenant received the registered mail package sent to her forwarding address. I find that the tenant was deemed served with the landlord's registered mail application for dispute resolution on October 27, 2015 (5 days after its registered mailing).

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent or rental loss as well as damage as a result of this tenancy?

Is the landlord entitled to retain the tenant's security deposit towards any monetary award?

Is the landlord entitled to recover the \$50.00 filing fee for this application?

### Background and Evidence

This tenancy began on September 1, 2014 as a month to month tenancy with a rental amount of \$850.00 payable on the first of each month. The landlord testified that the

tenant vacated the rental unit on October 8, 2015 after an ongoing, unresolved issue with another occupant in the residential premises. The landlord testified that she continues to hold the tenant's security deposit in the amount of \$425.00 paid at the outset of the tenancy.

The landlord testified that, due to an unfortunate set of circumstances that remained unresolved prior to the tenant vacating the rental unit, the tenant vacated the rental unit on October 8, 2015 without providing any notice to the landlord that she intended to end the tenancy. The landlord testified that the tenant did not pay October 2015 rent (\$850.00). The landlord testified that the rental unit was not re-rented until November 2015. The landlord testified that, when the tenant vacated the rental unit, she provided a forwarding address.

The landlord testified that, after the end of a tenancy of approximately one year, the carpets and drapery required cleaning in the rental unit. She referred to the portion of the tenancy agreement that requires a tenant to clean the carpets and the drapery on move-out. The landlord also testified that a general clean of the unit was required. The landlord sought \$959.00 total for outstanding rent and expenses related to cleaning and the end of the tenancy and she sought to retain the tenant's security deposit. The details of the landlord's monetary request are as follows,

<b>Item</b>	<b>Amount</b>
Unpaid Rent/Loss: October 2015	\$850.00
Unit Cleaning (1 hr)	27.00
Carpet Cleaning	80.00
Drapery Cleaning	27.00
Less Security Deposit	-425.00
Less Smart Card Amount	-25.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order Sought</b>	<b>\$584.00</b>

The landlord testified that the tenant returned a "smart card" belonging to the rental unit/landlord and that the card had a balance of \$25.00 remaining. She testified that this money should be deducted from any amount owed by the tenant. The landlord submitted receipts for cleaning the unit at the end of the tenancy. She submitted a copy of a general cleaning receipt for this unit dated October 12, 2015 in the amount of \$27.00. She submitted a copy of a carpet cleaning receipt dated October 12, 2015 in the amount of \$80.00. She submitted a drapery cleaning receipt dated October 13, 2015 in the amount of \$27.00.

### Analysis

When a landlord seeks to retain a tenant's security deposit at the end of the tenancy, the landlord must comply with the requirements of section 38(1) of the *Act*; within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, the landlord must either return the security in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit. In this case, the landlord made an application to retain the security deposit on October 16, 2015 – 8 days after the tenant vacated the rental unit. The landlord has met the requirements of section 38.

In the landlord's application to retain the tenant's security deposit, the landlord provided a copy of the residential tenancy agreement, the condition inspection move-in and move-out reports. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that the tenant/respondent order pay the landlord. In order to claim for damage or loss under the *Act*, the landlord/applicant bears the burden of proof. The landlord must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant, in this case. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord provided verification in the form of her undisputed sworn testimony as well as receipts with respect to their monetary loss or output at the end of this tenancy, particularly three receipts for drapery, carpet cleaning and general cleaning in the amounts of \$27.00, \$27.00, \$80.00 respectively. The landlord also provided proof of the damage and cleaning required by the submission of the condition inspection report. The landlord referred to the residential tenancy agreement submitted as evidence which showed that the tenant was aware that carpet and drapery were to be cleaned at the end of tenancy. Therefore, I find that the landlord has proven monetary loss totalling \$134.00 as a result of the tenant vacating the unit without completing the cleaning to the standard required by section 37 of *the Act* and the Residential Tenancy Policy Guidelines.

The landlord provided undisputed sworn testimony that the tenant vacated the unit without providing any notice to end tenancy on October 8, 2015. The landlord testified that the rental unit was not re-rented until November 2015 and indicated that attempts to rent at mid-month were very difficult given the condition of the unit and the time of month. I find that the landlord is entitled to \$850.00 for October 2015 rent.

As the landlord has been successful in this application, I find that the landlord is entitled to recover the 50.00 filing fee for this application

### Conclusion

I issue a monetary order in favour of the landlord as follows,

<b>Item</b>	<b>Amount</b>
Unpaid Rent/Loss: October 2015	\$850.00
Unit Cleaning (1 hr)	27.00
Carpet Cleaning	80.00
Drapery Cleaning	27.00
Less Security Deposit	-425.00
Less Smart Card Amount	-25.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order to the Landlord</b>	<b>\$584.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 17, 2016

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**Residential Tenancy Branch**