



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for compensation for loss - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Landlord submitted digital evidence on a cd without determining that the Tenant could access the information contained on the cd. The Tenant states that it has no capacity to read the cd and has not been able to read it.

Rule 3.10 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure provides that prior to the hearing the party submitting digital evidence must determine that the other party have the equipment for playback or are otherwise able to gain access to the evidence. Where a party is unable to access the digital evidence the evidence may not be considered. As the Landlord failed to ensure that the Tenant was able to gain access to the evidence on the cd, I decline to consider the cd as evidence.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on June 1, 2013 and ended on October 31, 2014. Rent of \$1,550.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$775.00 as a security deposit and \$200.00 as a pet deposit. The Parties mutually conducted a move-in inspection and completed a condition report with a copy provided to the Tenant. This condition report was not provided as evidence by the Landlord. The Tenant did not attend a move-out inspection and does not dispute the Landlord's claim to retain the security and pet deposit. No move-out condition report was provided as evidence by the Landlord to the RTB.

The Landlord states that the Tenant left the unit unclean and damaged and claims as follows:

- \$3,185.00 for the costs to repair various damages to the unit. The Landlord provides an invoice setting out the tasks done but without assigning any value to the tasks. It is noted that the invoice includes the installation of new batteries in existing smoke detectors and the installation of the units. The Landlord states that some walls were painted in February 2012 and that the bedroom door had a hole by the doorknob with no doorstop that had been present at move-in. The Tenant states that damages to the walls and doors were pre-existing damage and had been marked on the move-in report. The Tenant states that not all the bedrooms had door stops at the start or during the tenancy. The Tenant states that during the tenancy a flood in the basement occurred and that the Landlord never attended to either assess the damage or to make repairs. It is noted that work on the invoice includes work in the basement area;
- \$2,552.67 for repairs to three windows. Invoice provided. The Landlord states that a bedroom window was smashed, that the small bedroom window was cracked, and the bathroom window was cracked. The Landlord states that the windows were possibly original to the older house. The Tenant states that the master bedroom window was broken during a storm when a branch fell on the window. The Tenant states that the Landlord was informed immediately and told the Tenant that it would be addressed by insurance at the end of the tenancy. The Tenant states that there was nothing wrong with the glass on the other windows but the wooden frames around these windows was rotten and falling apart;
- \$217.35 for the costs to clean the basement and master bedroom carpets, invoice provided. The Landlord states that the carpets reeked and were covered in feces and urine. The Tenant states that the basement carpet was damaged

from a flood that occurred in the spring of 2015 when the sewer that was clogged with tree roots backed up. The Tenant states that the Landlord was immediately informed however the Landlord did not clean the basement after the flood. The Tenant states that the Tenant shampooed the carpets and rented air machines. The Landlord states that a company attend to make repairs from the flood and would have also cleaned the carpets. The Tenant states that the company who came out for the flood only repaired and cleaned out the lines into the unit. The Tenant states that the master bedroom carpet was cleaned by the Tenant's own Bissell carpet cleaner at move-out but that the rug was cream colored and old and did not clean well. The Landlord states that this carpet was about 10 years old;

- \$350.00 for the cost of cleaning the unit. No invoice was provided. The Landlord states that none of the home was cleaned. The Tenant states that the unit was completely cleaned; and
- \$400.00 for yard repairs. No invoice was provided. The Landlord states that there were holes in the fence, deck railings torn down and garbage left. The Landlord states that the Tenant was required to maintain the lawn and the lawn was not mowed at the end that the grass was torn up and dog feces covered the yard. The Tenant states that the fence and railings were in disrepair at the outset of the tenancy and that at the outset of the tenancy pieces of plywood had been put over holes in the fence but that the neighbours 4 dogs would regularly get into the yard because of the fence. The Tenant states that the neighbours 4 dogs left the damage to the yard. The Tenant states that the only garbage left was in the bins for pick-up and that the only thing the Tenant did not do was to mow the lawn at move-out.

The Landlord states that given the damage to the unit it took the Landlord until February 15, 2015 to complete the repairs and obtain a new tenant. The Landlord states that it took a while to get the necessary items such as the windows that had to be ordered and to obtain persons to carry out the repairs. It was noted that the Landlord provided an email to a prospective tenant outlining the time to make repairs for a new tenancy start date and this email indicates that all the work would be completed by November 15, 2015. The Landlord states that they originally thought the repairs could be done by then. The Tenant states that the Landlords were absentee landlords and this is the reason it took so long to make the repairs. The Tenant states that she believes that the Landlords want the Tenant to pay for the Landlord's own responsibility and negligence.

### Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party.

Given the lack of a move-in condition report, considering the Tenant's evidence of damage at the outset of the tenancy, noting that the invoice to support the costs claimed include items that are the responsibility of the Landlord such as batteries for smoke detectors, and considering the lack of particulars to identify allocated costs to items damaged, I find that the Landlord has not substantiated either the Tenant's cause of the damage or the costs claimed for damage to the unit. I dismiss the claim for \$3,185.00.

Given the undisputed evidence of the one window being damaged during a storm, the lack of a move-in or move-out report and considering the Tenant's persuasive evidence that the glass on the other windows was not broken, I find that the Landlord has not shown on a balance of probabilities that the Tenant caused the damage to the windows. I therefore dismiss the claim for \$2,552.67.

Given the undisputed evidence of a flood that occurred in the basement I find that any damage to this rug left at the end of the tenancy was not damage that was caused by the Tenant. Policy Guideline #40 sets out the useful life of a rug at 10 years. Given the evidence of the age and color of the master bedroom rug I find that there was no value left to the rug. I therefore dismiss the claim for cleaning the carpets.

Given the lack of any evidence to support that the Tenant left the unit unclean and considering the Tenant's plausible evidence of cleaning, I find that the Landlord has failed on a balance of probabilities to substantiate that the Tenant failed to leave the unit reasonably clean. I therefore dismiss the costs claimed for cleaning the unit.

Accepting the Tenant's evidence of the state of the yard and fence at move-in and the undisputed evidence of the neighbour's dogs entering the yard I find that the Landlord has failed to substantiate that the Tenant was responsible for anything other than having left the lawn uncut at the end of the tenancy. However as the Landlord provided no invoice setting out any cost in relation to cutting the lawn I find that the Landlord has not substantiated any of the costs claimed for yard repairs.

Given that, with the exception of cutting the lawn, none of the repairs done to the unit after the end of the tenancy were found to be caused by the Tenant I find that the Landlord has not substantiated that the Tenant did anything to cause the Landlord any lost rental income and I dismiss this claim.

As the Tenant has not disputed the Landlord's claim to retain the security and pet deposit I do not have to consider whether or not the Tenant's right to its return was extinguished at move-out. As the amount of the combined security and pet deposit exceeds the filing fee I find that the claim for its return has been satisfied by the Landlord's retention of the security and pet deposit plus zero interest of **\$975.00**.

Conclusion

I order the Landlord to retain the security deposit and pet deposit plus interest of \$975.00 in full satisfaction of the claim.

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: July 4, 2016

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Residential Tenancy Branch