



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNSD, OLC, MND, MNSD, FF

### Introduction

In the first application the tenant applies for return of a security deposit and pet damage deposit.

In the second application the landlord applies to recover the cost of carpet cleaning and for various repairs to the premises after the tenant left.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant left the premises in such a state as to warrant any of the cleaning and repair claimed by the landlord?

### Background and Evidence

The landlords are Ms. L.M., who attended the hearing, and her husband Mr. R.M.

The rental unit is a two bedroom basement suite in the landlord's house. The tenancy started in November 2013 and ended January 30, 2016. The monthly rent was \$1000.00. The landlords received a \$500.00 security deposit and a \$200.00 pet damage deposit.

The landlords did not conduct a move-in inspection and prepare a condition report at the start of the tenancy.

At the end of the tenancy the tenant and the landlord Mr. R.M. together inspected the premises. No formal report appears to have been completed. None was filed in this proceeding.

The tenant provided a forwarding address in writing to the landlords at the end of the tenancy.

About fourteen days later, the tenant received a \$350.00 cheque from the landlords as the remainder of her security deposit. The landlords had unilaterally retained \$150.00 for the cost of re-cleaning the carpets and for minor repairs around the home.

The tenant returned the cheque and asked about her pet damage deposit. In late February or perhaps March, the landlords sent the tenant another cheque for the \$350.00 and, under separate cover, a cheque for the \$200.00 pet damage deposit.

The tenant sent both cheques back to the landlords, uncashed.

Ms. M.M. testifies that though the tenant had the carpets cleaned, they were not cleaned fully and that spots started to show up as the carpets dried from the first cleaning. She had another company re-clean the carpets on February 2, at a cost of \$80.00. She says all the spots came out with the second cleaning.

Ms. M.I. produced photos of the interior of the premises and claimed that the range hood light cover had been broken, a baseboard in the bathroom had been damaged by water, a window sill had paint chipped from it, numerous tack marks had damaged the front door, the tenant had left a screw in a wall and that the tenant's cat had damaged the front door weatherstripping.

The tenant testifies that the toilet leaked causing the moulding to disintegrate. She says she reported the leak and it was fixed by Mr. R.M.

She says that the screw in the wall was there at move in.

She says she had the carpets professionally cleaned and they looked fine when she left. The cleaner had a "black light" that showed staining and the staining was removed. She agrees the landlords were dissatisfied with the cleaning at move out time.

She considers the tack marks and chipped ledge paint to be reasonable wear and tear.

The tenant's daughter testifies that the carpets looked fine at move out.

She says the range hood cover must have been broken before she moved in.

### Analysis

#### The Landlord's Claim

A landlord puts herself in a very difficult position should she not fulfil her statutory obligation to conduct a move in inspection and prepare a report or to prepare a move out inspection report.

The purpose of such a report is to obtain agreement about the state of the premises at the start of the tenancy and to either obtain agreement about the state of the premises at the end of the tenancy or else obtain agreement about what is not agreed to.

Once a tenant has returned possession of a rental unit to a landlord she is no longer able to clean or repair further. If a landlord raises a complaint later, the tenant is not able to attend to remedying the complaint or to secure evidence, such as photographs.

In this case the landlord has presented the move out report of the tenant just prior to this one. That is some evidence of the state of the premises at the time this tenant move in, but it is not the best evidence.

#### Carpets

I find that the landlords were justified in having the carpets re-cleaned. It is not unusual that once a carpet has dried from a cleaning, spots re-appear. In this case, I doubt that the landlords would have gone to the expense of engaging a second carpet cleaner unless it had been necessary.

I award the applicant landlord \$80.00.

#### Weatherstripping

I find that the weatherstripping under the front door had been damaged during this tenancy. From the photos, I determine that the damage was likely caused by the tenant's cat, despite what she says about her set up to let the cat in and out.

I award the applicant landlord \$50.00 for material and labour for this item.

#### Oven Hood Light Cover and Bedroom Wall Screw

On a balance of probabilities I am not satisfied that the cover was damaged or the screw inserted during this tenancy. I dismiss these items of the claim.

#### Bathroom Floor Moulding

The damage to the moulding is slight and it is located behind a toilet. It is damage not readily observable even to a person cleaning the floor in that area. It may have been caused by a very slight amount of water pooling at that location. It is not disputed that the water was coming from

a toilet leak, which the tenants reported and the landlord repaired. I find that the tenant was not responsible for this damage.

#### Window Ledge Chipping

I find the paint chipping that occurred on the window ledge to be reasonable wear and tear associated with the use of the window ledge as a location to place items.

#### Front Door Crown Moulding

It is expected that a tenant will decorate her home to her satisfaction and will cause small holes in walls (see Policy Guideline #1 "Landlord & Tenant - Responsibility for Residential Premises").

In this case the holes, though small, are in door mouldings, not drywall, and they are numerous. I consider them to be excessive and to be damage beyond that to be expected.

I award the applicant landlord \$50.00 for material and labour for the repair.

In result, the applicant landlord is entitled to an award of \$180.00. At hearing and in her Monetary Order Worksheet, she limited her claim to \$150.00 and so I award her that.

#### The Tenant's Claim

At the end of the tenancy the landlords held a \$500.00 security deposit and a \$200.00 pet damage deposit. They also had the tenant's forwarding address in writing. They did not have the tenant's written authorization to retain any part of the deposit money.

Section 38 of the *Residential Tenancy Act* (the "RTA") provides that in these circumstances a landlord has a fifteen day period to either repay the deposit money or to make an application to retain all or a portion of it. If a landlord fails to comply, the tenant is entitled to double the deposit.

The landlords failed to comply with s. 38. They did not return all of the deposit money.

Residential Tenancy Policy Guideline #17, "Security Deposit and Set off [*sic*]" provides that a tenant applying to recover deposit money must be awarded the doubling even if it is not claimed in her application, unless she specifically refuses it. The question was put to this tenant at the hearing and she declined to refuse the doubling under s. 38.

At the end of the tenancy the landlords held \$700.00 in deposit money. I double that amount to \$1400.00 and award it to the tenant. Had the tenant cashed the landlords' original \$350.00

cheque or either of the two later cheques, those amounts would be subtracted from the doubled amount. As those cheques were returned and not cashed, the full amount is awarded.

Conclusion

The applicant landlord is entitled to an award of \$150.00. As the landlords failed to meet their obligations under the *RTA* at the move in and move out and as they have acted in violation of s. 38, I decline to award recovery of any filing fee.

The tenant is entitled to an award of \$1400.00. Her application was successful and was necessary and so I award her recovery of the \$100.00 filing fee.

The tenant will have a monetary order against the landlord Ms. L.M. for the difference of \$1350.00.

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: July 20, 2016

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Residential Tenancy Branch



