



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MND, MNSD, FF (Landlord's Application)  
   MNSD, MNDC, FF (Tenant's Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord on May 13, 2016 and by the Tenant on May 19, 2016. The Landlord applied to keep the Tenant's security and pet damage deposits (herein referred to as the "Deposits"), for a monetary claim for damage to the rental unit, and to recover the filing fee from the Tenant. The Tenant applied for the return of the Deposits and for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement.

The Landlord, the Tenant, and the Tenant's legal advocate appeared for the hearing. The Landlord and Tenant provided affirmed testimony during the hearing and the Tenant's legal advocate made submissions. The parties confirmed receipt of each other's Application and evidence served prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. The parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for damage to the rental unit?
- Did the Landlord extinguish his right to make a claim against the Tenant's Deposits?
- If so, is the Tenant entitled to double the amount of the Deposits pursuant to his claim for monetary compensation?

### Background and Evidence

The parties agreed that this tenancy for a one bedroom rental unit in a residential building started on March 16, 2012 on a month to month basis. A written tenancy agreement was completed between the Tenant and the previous landlord. Monthly rent was payable by the Tenant in the amount of \$600.00 on the first day of each month. The Tenant paid a total of \$600.00 in Deposits to the previous landlord at the start of the tenancy. This comprised half as a

security deposit and half as a pet damage deposit. The Landlord took over the tenancy in August 2015. The tenancy was ended for May 1, 2016 with a 2 Month Notice to End Tenancy for the Landlord's Use of the Property (the "Notice") because the Landlord wanted to do major repairs and renovations to the rental unit.

The parties confirmed that the previous landlord had not completed a move-in Condition Inspection Report (the "CIR") at the start of the tenancy. The Tenant's legal advocate stated that the Landlord had also failed to complete a move-out CIR with the Tenant and had not arranged or given an opportunity for the Tenant to appear for one at the end of the tenancy.

The Tenant provided the Landlord with a forwarding address in a letter on April 30, 2016. The Landlord stated that at the end of the tenancy he received the Tenant's forwarding address and his keys and the Tenant said that he was leaving. The Landlord confirmed that he had not made any arrangements with the Tenant to complete a move-out CIR because the Tenant simply left. Therefore, the Landlord completed the move-out CIR in the absence of the Tenant.

The Tenant's legal advocate submitted that the Landlord had failed to make the Application to keep the Tenant's Deposits within the 15 day time period permitted by the Act. In addition, the Landlord had failed to complete both the move-in and move-out CIR for this tenancy. Therefore, the Tenant claims double the amount of the Deposits from the Landlord as provided by the Act in the amount of \$1,200.00.

The Landlord made his monetary claim for \$600.00 which was the amount of the Tenant's Deposits he wanted to keep. The Landlord testified that the Tenant failed to clean the rental unit at the end of the tenancy and caused damage in the form of a cut mark in the lino and stains on the carpet. However, the Landlord failed to provide any invoice evidence to explain the amounts that he was seeking to claim from the Tenant for this damage and how this amounted to \$600.00. However, the Landlord was given an opportunity to provide oral testimony in this respect.

The Landlord testified that he had not completed any of the cleaning or repairs to the rental unit as of the date of this hearing because he had not gotten around to doing it. Therefore he was unable to determine the exact amount he was seeking from the Tenant. The Landlord asked that he be allowed to submit this evidence once he had obtained it or withdraw his Application. The Tenant's legal advocate disputed this and stated that the Landlord had been given sufficient opportunity to provide this evidence prior to his hearing and did not consent to this or the withdrawal of his Application.

The Landlord provided an extensive amount of photographs and video footage taken of the state of the rental unit at the end of the tenancy. This shows extensive dirty marks on the walls throughout the entire rental unit. The Landlord referred to this evidence during his testimony and stated that the Tenant had failed to clean the fridge, the stove, the kitchen cupboards, the bathroom, the walls, the windows, and the baseboards. The Landlord testified that the Tenant

had failed to shampoo the carpets at the end of the tenancy as there was staining to it. The Landlord testified that there was also a rip mark on the lino floor.

The Landlord testified that the Tenant smoked in the rental unit even though it was a non-smoking rental unit and there was extensive mould in the corners of each room. The Landlord estimated that there was probably 30 hours of cleaning that had to be performed in the rental unit. The Landlord then submitted that if he would not be given a chance to submit evidence to support the losses to him, then he should be awarded loss of rent.

The Tenant disputed the Landlord's evidence and stated that he had cleaned the rental unit but the rental unit was so old and needed so many repairs that this was the reason why it appeared like this on the Landlord's photographic and digital evidence. The Tenant submitted that the stains on the wall were caused because the water in the rental building was hard and when he took showers the water condensed down the wall which then manifested itself as stains.

The Tenant explained that he should not be held accountable for the cleaning of the rental unit because he received the rental unit at the start of the tenancy unclean and in a state of disrepair at the start of the tenancy. The Tenant testified that he had verbally addressed this issue with the previous landlord but no action was taken. The Tenant denied the rip to the lino and submitted that this was present at the start of the tenancy.

The Tenant's legal advocate stated that the rental unit was old and that the alleged damage and lack of cleaning to the rental unit was reasonable wear and tear. She pointed to the Landlord's photographs of the bathroom and submitted that the bath and toilet were old and this could be clearly seen in the photographs. The Tenant's legal advocate argued that the Landlord intended not to clean it because he was going to do major renovations and repairs to it.

When the Tenant was asked why he had not cleaned the fridge and the stove at the end of the tenancy, the Tenant testified that he had cleaned them but they were so old that they did not clean well. However, later on in the hearing, the Tenant acknowledged that the Landlord had provided him with a new fridge in 2015.

### Analysis

In this dispute, the Landlord seeks to claim the Deposits based on the damages to the rental unit. The Tenant seeks to claim double the Deposits because the Landlord failed to comply with the Act in returning them to him. Therefore, I first turn my mind to the Tenant's Application.

I accept the Landlord was provided with a forwarding address in writing by the Tenant on April 30, 2016. The tenancy ended pursuant to the Notice on May 1, 2016. Therefore, pursuant to the 15 day time limit set by Section 38(1) of the Act, the Landlord would have had until May 16, 2016 to make the Application to keep the Tenant's Deposits. The Landlord made the Application on May 13, 2016 which is the date the Residential Tenancy Branch received the Application and

the Landlord paid the filing fee. Therefore, I find the Landlord made the Application to keep the Tenant's Deposits within the 15 day time limit set by the Act.

However, Sections 23 and 35 of the Act states that a tenant and landlord together must inspect the condition of the rental unit at the start and end of a tenancy. These provisions of the Act continue to state that the landlord must complete the condition inspection report in accordance with the regulations by providing the tenant opportunity to take part in it and that the CIR must be signed. Sections 24(2) and 36(2) states that the right of the landlord to claim against the security or pet damage deposit for damage to the rental unit is **extinguished** if the landlord fails to comply with the reporting requirements as laid out in Section 23 and 35 of the Act.

In this case, I find that no move-in CIR was completed at the start of the tenancy and no arrangements or opportunity were made with the Tenant by the Landlord to conduct or complete the move-out CIR at the end of the tenancy. Therefore, I am only able to conclude that the Landlord failed to meet the reporting requirements of the Act. As a result, I must find that the Landlord's right to claim against the Deposits was extinguished when these breaches occurred.

Policy Guideline 17 to the Act consists of a section titled "Return or Retention of Security Deposit through Arbitration." Point number 3 of this section states that an arbitrator **will** order the return of double the deposit if the landlord has made a claim **and** the right to make a claim has been extinguished under the Act. The tenant was not willing to waive the right to the doubling of the Deposits during the hearing. Therefore, I have no discretion and find that the Landlord must pay the Tenant double the Deposits in the amount of \$1,200.00. Accordingly, I dismiss the Landlord's Application to keep the Tenant's Deposits.

I now turn my mind to the Landlord's monetary claim for damages to the rental unit. In this respect, the Tenant relied on his oral testimony alone to rebut the Landlord's oral, photographic, and video evidence. Section 37(2) (a) 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.

I find the Landlord's video and photographic evidence to be very convincing as it clearly demonstrates that the rental unit was left in a state which I can only describe as despicable. There is extensive staining on the walls throughout the rental unit and the evidence clearly shows to me that this is not reasonable wear and tear. I find the Tenant's testimony that the stains were caused due to the hard water in the rental unit lacked plausibility and was inconsistent to the content on the photographic evidence.

I find the Tenant failed to provide a preponderance of supporting evidence, such as written notices to the Landlord of problems with the water or the lack of cleaning he claimed that was not done at the start of the tenancy, which would have undermined the Landlord's evidence in this respect. Based on the foregoing, I am only able to conclude that the Tenant failed to clean the rental unit pursuant to his obligation under Section 37(2) (a) of the Act.

However, the Landlord failed to provide sufficient evidence to support the costs he was claiming for the loss of cleaning and damage to the lino. The Landlord made his Application to keep the Deposits on May 13, 2015 and had the interim time period before this hearing took place to prove his Application and provide evidence to verify the losses being claimed. However, the Landlord failed to take reasonable steps to obtain quotes or estimates of the costs associated with his monetary claim. Therefore, I find the Landlord had sufficient time to gather and provide this evidence prior to this hearing and I determined that I would assess the Landlord's monetary claim based on the oral evidence he had provided in this hearing.

The Landlord also submitted during the hearing that he should be allowed to claim for loss of rent from the Tenant because he failed to hand back to him a clean and undamaged rental unit. However, the tenancy was ended by the Landlord with the Notice and the Tenant vacated the rental unit in accordance with that Notice. Furthermore, the Landlord gave the Notice to the Tenant so that he could do major renovations and repairs to the rental unit. Therefore, I find the Landlord has no basis to claim for loss of rent.

In determining the Landlord's monetary claim, I turned to Policy Guideline 16 to the Act on claims for damages. This states in part:

*"An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right."*

[Reproduced as written]

Based on the foregoing, I find the Landlord has provided sufficient and clear evidence that the Tenant failed to comply with the Act in leaving the rental unit clean. I find the Landlord failed to convince me that the Tenant caused the rip to the lino floor. As there has been an infraction of a legal right, I find the Landlord is entitled to a nominal award for the costs of cleaning the rental unit.

I balance this award in consideration of the fact that the Landlord intends to do major renovations and repairs to the rental unit which will likely result in additional dust and dirt within the rental unit which the Landlord will have to bear the cost of. Therefore, I find that \$200.00 is an appropriate minimal award that is reflective of the cost for cleaning a one bedroom rental unit.

As the Landlord had to pay the \$100.00 filing fee to make this Application to request this award, I find he is also entitled to recover this fee pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is \$300.00. The Act allows me to set off amounts that I

find are payable to the parties. The Tenant is awarded \$1,200.00 for double the amount of the Deposits. The Landlord is awarded \$300.00 for his monetary claim for cleaning of the rental unit. Therefore, the difference is \$900.00 which I order the Landlord to pay to the Tenant.

### Conclusion

The Tenant failed to clean the rental unit. Therefore, the Landlord is awarded \$300.00 inclusive of the filing fee. The Landlord failed to meet the reporting requirements of the Act. Therefore, the Landlord's Application to keep the Tenant's Deposits is dismissed and the Tenant is awarded double the amount of \$1,200.00

The Tenant is issued with a Monetary Order for the remaining balance of \$900.00. This order is final and binding on the parties and may be enforced by the Tenant in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment.

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: August 12, 2016

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Residential Tenancy Branch

