



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MND, MNSD, MNDC, FF; MNSD, OLC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 her filing fee for this application from the tenant pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the Act for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The tenant appeared with two witnesses. The landlord appeared.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested? Is the landlord entitled to recover her filing fee for this application from the tenant? Is the tenant entitled to a monetary award for the return of a portion of his pet damage and security deposits? Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

The parties agree that there was a tenancy agreement for monthly rent in the amount of \$750.00. This tenancy ended 1 December 2015. The tenant provided her forwarding address that day. The landlord continues to hold the tenant's security deposit in the amount of \$375.00 and pet damage deposit in the amount of \$375.00.

Condition inspection reports were not created for this tenancy. There is no written tenancy agreement.

The landlord filed her application 15 December 2015. The tenant filed her application 15 December 2015.

The landlord provided evidence that the suite was not left clean at the end of the tenancy. The landlord provided photographs showing that the fridge was dirty, the floors were unclean, cabinets were unclean, walls were unclean, and the stove is unclean. The landlord claims for the cost of cleaning. The landlord provided evidence that she paid \$200.00 to the subsequent tenant in compensation for the lack of cleaning.

It is the tenant's evidence that the rental unit was returned in substantially the same condition in which it was received.

### Analysis

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear.

*Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. ...

The photographs show that the rental unit was left in a condition that did not comply with subsection 37(2) of the Act. I do not accept the tenant's evidence that the rental unit was in this condition at the beginning of tenancy as I found the landlord's evidence more credible on the subject. In particular, the nature of the uncleanliness is that which accumulates over the course of a tenancy (the food stains). I find that the tenant breached subsection 37(2) of the Act.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant

bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

I accept the landlord's evidence that she compensated her new tenant \$200.00 for the cleaning. I find that the landlord has shown that this loss was caused by the tenant. The tenant did not raise any issues with mitigation. On this basis, I find that the landlord is entitled to recover the loss. The landlord is entitled to recover this amount from the deposits held.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit and pet damage deposit or file for dispute resolution for authorization to retain a security deposit and pet damage deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit and pet damage deposit.

The tenancy ended 1 December 2015 and the forwarding address was received that day. The landlord filed her application claiming for the cleaning loss within fifteen days. The rules regarding extinguishment for failure to comply with the rules regarding condition inspections are not applicable in this case as the landlord has applied for relief including loss.

By claiming for return of her security deposit when she did, the tenant applied prematurely. As filed, the tenant was not entitled to return of her security deposit and pet damage deposit at that time as the landlord had a validly filed claim against the deposits.

Now the landlord's claim has been adjudicated and there is a balance to return on the deposit. *Residential Tenancy Policy Guideline*, "17. Security Deposit and Set off" provides guidance in this situation:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
  - a landlord's application to retain all or part of the security deposit, or
  - a tenant's application for the return of the depositunless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

On this basis, the tenant is entitled to return of the balance of the deposits.

As the landlord has experienced greater success in this application than the tenant, the landlord is entitled to recover her filing fee from the tenant. The tenant is not entitled to recover her filing fee.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$450.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Pet Damage Deposit	\$375.00
Security Deposit	375.00
Offset Landlord's Award	-300.00
<b>Total Monetary Order</b>	<b>\$450.00</b>

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: August 12, 2016

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Residential Tenancy Branch