



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNR, MND, MNDC, FF

### Introduction

This hearing was convened in response to an application by Tenant FS and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on January 23, 2016 for:

1. An Order for return of double the security deposit - Section 38.

The Landlord applied on April 20, 2016 for:

1. A Monetary Order for unpaid rent or utilities - Section 67;
2. A Monetary Order for damage to the unit - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions. Both Parties were also given opportunity to make final comments at the end of the hearing and to raise any evidence that was missed to this point. Final comments were incorporated into the background set out below.

### Preliminary Matter

The Parties agree that a separate tenancy agreement exists for Tenant FS (the “Tenant”) and tenant MR (the “boyfriend”). Section 58 of the Act provides that a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of, inter alia, the rights and obligations under the terms of a tenancy agreement. As the Landlord's application makes claims against both the Tenant and the boyfriend each of whom have a separate tenancy agreement and considering that the Landlord's application has been joined with the Tenant's application I dismiss the Landlord's application in relation to the boyfriend with leave to reapply with the exception of those matters that may be subject to *res judicata*.

It is noted that the Tenant submitted two monetary worksheets with evidence packages detailing items that are not included on the original application. Rule 4.1 of the RTB Rules of Procedure provides that an application may be amended to add to the claims

made in the original application but that the applicant must complete an Amendment to an Application for Dispute Resolution form and file this form with the RTB. Rule 4.2 of the RTB Rules of Procedure provides that in circumstances that can reasonably be anticipated, an application may be amended at the hearing. Although not included in the original application I find that the Tenant's claim in the one worksheet for recovery of the filing fee would be reasonable anticipated as an oversight and therefore find that this claim may be considered. As the remaining amounts set out in the monetary worksheet over the items and amounts contained in the original application are not included in any amendment I find that no amendment has been made and decline to consider the extra claims set out on the monetary worksheets.

It is noted that during the hearing the Landlord became upset with, inter alia, the dismissal of his application as against the boyfriend and what the Landlord describes as wrong advice from the Residential Tenancy Branch (the "RTB"). The Landlord made rude, disrespectful and condescending comments towards the Arbitrator's ability to make decisions. The Landlord was informed of Rule 6.10 of the RTB Rules of Procedure that disallows such inappropriate behavior and the Landlord was warned that he could be excluded from the hearing if the Landlord continued with the disruptive behavior. The Landlord states that he made separate applications against both the Tenant and the boyfriend and submitted separate documentation for each application but that the RTB combined the separate applications into one application for this hearing. The Landlord apologized to the Arbitrator and stated that he was very frustrated with the advice given by the RTB. It was clarified that the RTB only provides information. The Landlord thereafter conducted himself appropriately.

#### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

#### Background and Evidence

The following are undisputed facts: The tenancy of a fully furnished bedroom with a signed tenancy agreement started on April 1, 2015. Rent of \$1,165.00 was payable monthly. At the outset of the tenancy the Landlord collected \$582.50 as a security deposit.

The Landlord states that the Parties mutually conducted a move-in inspection at the onset of the tenancy and that a report was completed with a copy provided to the Tenant. The Tenant states that no move-in inspection was conducted and none was offered. The Tenant states that another tenant gave her entry to the unit and that the Landlord came later and gave the Tenant a set of keys. The Tenant states that although

she paid the rent from April 1, 2015 she did not move into the unit until about May 8, 2015 as she was waiting out of country for the documents to enter the country. The Tenant states that the room was not clean at move-in and that the Landlord had sublet the room to another person between April 1 and May 8, 2015.

It is noted that the Landlord provided separate move-in and move-out condition reports for the Tenant and her boyfriend and that each include a report of rooms beyond the bedrooms. The Tenant states that additional tenants rented rooms in the unit at the same time the Tenant and her boyfriend rented their rooms. It is noted that each move-out report sets out the same move out date and the same damaged items at move out.

The Landlord states that the Tenant did not pay any rent for July, August and September 2015 rent and claims \$3,495.00. The Landlord states that the Tenant normally paid her rent in cash and that the Landlord issued receipts for these rents. The Tenant states that she paid her full rent for July 2015 in cash on the last day of June 2015 and that the Landlord did not provide her with a receipt. The Tenant states that she normally paid her rent in cash and no receipts were ever provided by the Landlord for her rent until the Tenant's boyfriend arrived.

The Tenant states that her boyfriend rented another bedroom in the unit and that on July 14, 2015 the Tenant moved into the boyfriend's bedroom. The Tenant states that the Landlord agreed to the move if another tenant was found to take over the Tenant's lease. The Tenant states that she found another tenant for July 14, 2015 for her bedroom at the same rental rate. The Tenant states that she cleaned the bedroom and the next tenant moved in an hour after the Tenant moved out of the room.

The Tenant states that she asked for another tenancy agreement for her move into her boyfriend's room but that the Landlord told her it was too much paperwork and the situation was just fine. The Landlord denies that there was any conversation about the Tenant moving into her boyfriend's room. The Landlord states that he mutually agreed to end the tenancy with both the Tenant and her boyfriend because they were not paying their portion of the rent and that the Landlord was getting complaints from the other tenants in the unit.

It is noted that although the Landlord includes damage to a mattress pad on the monetary worksheet no evidence was provided on this item.

The Landlord states that he found the tenant to take over the Tenant's bedroom "around August 1." The Landlord states that the new tenant paid the same rent as the Tenant.

The Tenant states that the Landlord informed her that he would not return the security deposit until the Tenant moved out of the boyfriend's bedroom. The Landlord states that the Tenant's forwarding address was received on May 5, 2016. The Landlord states that a move-out inspection was offered to the Tenant when the Tenant and her boyfriend moved out of the boyfriend's bedroom. The Landlord states that he had already made the application to retain the security deposit and so did not return the security deposit. The Tenant states that she provided her forwarding address again in October 2015. The Tenant claims return of double the security deposit.

The Landlord states that the Tenant failed to pay a move in fee as required by the addendum to the tenancy agreement and claims \$100.00. The Landlord states that this fee was paid by the Landlord. No receipt for this payment was provided. The Tenant states that she paid the move-in fee with her first rent payment.

The Landlord states that the Tenant and her boyfriend only returned one fob and that each had been given a fob at the outset of their tenancies. The Landlord states that the fobs are recorded with a number identifier but the Landlord did not check those numbers to determine whose fob was not replaced. The Landlord claims \$65.00. It is noted that the Tenant gave no evidence in relation to the fobs.

The Landlord states that the boyfriend's room was not cleaned when the Tenant and her boyfriend moved out in October. The Landlord claims \$380.00.

The Landlord states that the duvet from the Tenant's room was missing. The Landlord states that he purchased the duvet in January 2015 at a cost of \$239.99. The Landlord states that he replaced the duvet and has no receipt for the replacement cost. The Landlord claims \$250.00. The Tenant states that the duvet was present when the Tenant moved out of the bedroom and was a normal simple duvet. The Tenant denies taking the duvet.

The Landlord states that the Tenant left green towels damaged by bleach. The Landlord states variably that he does not know how many were damaged and that all were damaged and returned orange colored. The Landlord provides the receipt for the original purchase of the towels from January 2015. The Landlord claims \$150.00. The Tenant states that there were no green towels in her room. The Tenant states that she was only given 2 large towels: one white and one brown. The Tenant states that she never uses bleach and does not have such a product.

The Landlord states that the mattress in the boyfriend's room was damaged at move-out and claims \$1,707.92.

The Landlord states that the vertical cloth blinds in the Tenant's room, new in 2011, were damaged as the draw string was severed resulting in the inability to open or close the blinds. The Landlord states that the blinds were replaced approximately in early August 2015. The Landlord does not know the original cost and states that the replacement costs including installation is \$793.00. The Landlord provides a photo of blinds in a heap. The Landlord claims this amount and provides an estimate. The Tenant states that the blinds in her room were not damaged at all and that perhaps the Landlord is referring to the boyfriend's room. The boyfriend states that there were no problems with the blinds in his room.

The Landlord states that the garburator was damaged by the Tenant and claims the replacement cost of \$150.00. The Landlord provides a receipt and it is noted that there is no contact information for the repair person the receipts indicates repairs and no mention of any replacement. The Landlord states that the person who signed the receipt is a plumber that has done work for the Landlord for several years and that this person is paid mostly in cash. The Tenant states that the garburator was not working properly at move-in and over the tenancy become worse. The Tenant states that three other tenants were in the unit when the Tenant moved into her bedroom. The Tenant states that she never used the garburator and that anybody else in the unit could have damaged the garburator.

The Landlord states that the Tenant damaged the dishwasher by using the wrong soap product. The Landlord states that the repairs consisted of inspecting and draining the dishwasher and claims \$100.00 for the repair person call out. The Tenant states that when she arrived at the unit she used the soap that was present and being used by the other tenants and that the dishwasher was not fully working.

### Analysis

Section 36 of the Act provides that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer at least 2 opportunities for a move out inspection.

Given the near identical move-out report and same dates for each of the Tenant and the boyfriend I find that this evidence is not credible in relation to the state of the Tenant's room at her stated move-out date of July 14, 2016. From these reports I accept that no move out inspection was done on the Tenant's room before the other tenant moved in. Given the Landlord's vague evidence of when the next tenant moved into the Tenant's room, I accept the Tenant's more persuasive evidence that the next tenant moved into

the room within an hour of the Tenant's departure from that room. As such, I find on a balance of probabilities that no move out inspection was offered or conducted by the Landlord and that the Landlord's right to claim against the security deposit was therefore extinguished at the Tenant's move out.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Overall I consider the Tenant's evidence to be more reliable and credible than the Landlord's vague and contradictory evidence. Given the date of the Landlord's application I do not accept that the Landlord received the Tenant's forwarding address in May 2016. I accept the Tenant's preferred evidence that the forwarding address was given to the Landlord in October 2015. As the Landlord did not make a claim until April 21, 2016 and has not returned the Tenant's \$582.50 security deposit I find that the Landlord must now return double that amount plus zero interest to the Tenant. The Tenant is therefore entitled to **\$1,165.00**. As the Tenant has been successful with its application I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,265.00**.

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. Given the identical damages and dates contained in the move-out reports I find that the damages noted in the Tenant's move-out report to the blinds, duvet, mattress, towels and mattress pad are damages that were not present in the Tenant's room but refer to damages in the boyfriend's room. As such I find that the Landlord has not substantiated that the Tenant damaged these items and I dismiss these claims. As the claim for cleaning is in relation to the boyfriend's room and not the Tenant's room, I dismiss the claim for \$380.00.

Given that the Landlord did not provide any accounting for the receipt of the Tenant's rent payments and considering the Tenant's overall preferred evidence I find that the Landlord has not substantiated that the Tenant failed to pay rent for July 2015 and I dismiss this claim. Based on the Landlord's own evidence that a new tenant was found for at least August 1, 2016, I find that the tenancy with the Tenant was over at that point and that no further rent was payable. As such I dismiss the Landlord's claim for unpaid rent for August and September 2015.

Given the overall preference for the Tenant's evidence and considering that the Landlord provided no evidence of having paid a move-in fee I find on a balance of probabilities that the Landlord has not substantiated that the Tenant failed to pay the fee and I dismiss this claim. Given the lack of evidence of identifying numbers when such was known and available to the Landlord I find that the Landlord has failed to substantiate that the Tenant did not return her fob and I dismiss this claim.

Given the undisputed evidence that there were other tenants in other rooms of the unit and given the evidence of separate tenancy agreements for each of the Tenant and her boyfriend I find that the kitchen and living room areas that were shared by the Tenant and the other tenants were shared common areas. As the dishwasher and garburator is located in the common area and accepting the Tenant's undisputed evidence that other tenants used this area as well, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused the damage to either of these items. I therefore dismiss the claims in relation to the dishwasher and garburator.

As the Landlord's claims have had no merit I find that the Landlord is not entitled to recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

#### Conclusion

The Landlord's application is dismissed. I grant the Tenant an order under Section 67 of the Act for **\$1,265.00**. If necessary, this order may be filed in the Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 23, 2016

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Residential Tenancy Branch