



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNSD, FF

### Introduction

In the first application the landlord seeks a monetary award for unpaid rent and the cost of cleaning the premises after the tenant left.

In the second application the tenant seeks to recover her security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “Act”).

This matter came on for hearing on September 16, 2016 but was adjourned the permit the landlord to refile documentary evidence that had somehow gone astray after he submitted it to the government offices. The landlord delivered or perhaps re-delivered the material to the tenant’s agent by registered mail sent September 21 to the address provided for that purpose at the first hearing. That registered mail package went “unclaimed by recipient” at the Post Office and was returned to the landlord. The tenant’s advocate, her mother-in-law Ms. J.F. indicated she had broken her foot and couldn’t pick up the material. In my view the tenant had three weeks to claim the package at the Post Office and broken foot or not, arrangements should have been made to recover it. I find the tenant was duly served with the material.

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 show on a balance of probabilities that the tenant failed to properly clean the premises before vacating? If so, what is reasonable compensation for the landlord having to clean? Did the landlord suffer a loss of rental income as a result of the tenant vacating before the expiry of a fixed term tenancy and if so, can he claim it from the tenant? Is the tenant entitled to a doubling of her security deposit?

Background and Evidence

The rental unit is a three bedroom portion of a house. The tenancy started December 1, 2015 for a fixed term of one year. The monthly rent was \$1500.00, due on the first of each month, in advance. The landlord holds a \$750.00 security deposit.

In January the tenant contacted the landlord and informed him she would be vacating at the end of February. She had lost a roommate and could no longer afford the rent.

On February 20 the tenant contacted the landlord to say she would not be moving out.

On February 23 she contacted the landlord again to say she would be moving out.

The tenant vacated the premises on February 29. The evidence is equivocal whether or not a move out inspection was scheduled however it would appear that the landlord attended on the last day and requested that more cleaning be done. There is no move-out report signed by both parties.

The landlord provided a series of photographs indicating what he considered to be failings in the general cleaning of the premises.

The landlord did not obtain a new tenant for March 1. He re-rented the premises for April 1. He claims loss of March rent of \$1400.00. He requested that his claim be amended to \$1500.00 as that was the rent the tenant had been paying.

The landlord says that when the tenant gave her notice he informed her that he would do his best to re-rent the rental unit for March 1 and that if he did then the tenant would be "off the hook."

The tenant's advocate Ms. J.F. says she helped with the cleaning and that the premises were left clean but for the stove, which they neglected to do and the carpet. She says she hired two other people to help with the cleaning.

She contacted the landlord two days after move-out regarding the stove and return of the security deposit.

She says there were mice in the rental unit. The landlord's new tenant Ms. N.W. gave evidence that she's not seen any.

The tenant testifies that the landlord made her feel like she was getting her security deposit back. She provided him with a forwarding address on February 28 because she thought she was getting her deposit back. She was not interested in whether the landlord had found new tenants for March. He acted like everything was OK.

In response the landlords testifies that he knew the tenant thought she was getting her deposit back and that he did not tell her otherwise because then the tenant would not have cleaned the rental unit and he'd be saddled with an even larger, uncollectible cost.

### Analysis

The tenant, through her representative admits the stove was left without being cleaned.. She considers three to four hours were required to clean it. I award the landlord 3.5 hours for stove cleaning at \$20.00 per hour for a total of \$70.00.

The tenant's advocate acknowledges that the carpets were to be cleaned by the landlord. I award the landlord \$175.00 for carpet cleaning, as claimed.

Regarding the balance of the landlord's cleaning claim, it should be said that a landlord's view of the required level of cleaning almost invariably differs significantly from the view of a tenant who is keen to pack up and leave to her new place.

The *Act*, s. 37 requires that a tenant leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

I have considered the landlord's photographic evidence and find that but for the stove, the things he complains about are minor and that generally the tenant left the premises reasonably clean.

In regard to the yard, in my view the landlord's photographs of it show debris that has been there much longer than the three months this tenancy lasted for. I accept the tenant's witness Mr. J.E.'s testimony that much if not all of the yard debris was pre-existing. In my view the move-in condition report does not comment on the yard's condition at that time.

But for the stove and carpet I dismiss the remainder of the landlord's cleaning claim.

Regarding the landlord's claim for loss of rental income, I find that the tenant breached her fixed term tenancy by vacating before the end of the term.

A landlord in such a situation has options. Residential Tenancy Policy Guideline 3, "Claims for Rent and Damages for Loss of Rent" sets them out:

Where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord has two options. These are:

1. Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment;
2. Accept the abandonment or end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy.

These principles apply to residential tenancies and to cases where the landlord has elected to end a tenancy as a result of fundamental breaches by the tenant of the *Act* or tenancy agreement. Whether or not the breach is fundamental depends on the circumstances but as a general rule non-payment of rent is considered to be a fundamental breach.

If the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the notice to end the tenancy agreement is given to the tenant. The filing of a claim for damages for loss of rent and service of the claim upon the tenant *while the tenant remains in possession of the premises* is sufficient notice. Filing of a claim and service upon the tenant after the tenant has vacated may or may not be found to be sufficient notice, depending on the circumstances. Factors which the arbitrator may consider include, but are not limited to, the length of time since the end of the tenancy, whether or not the tenant's whereabouts was known to the landlord and whether there had been any prejudice to the tenant as a result of

the passage of time. The landlord may also put the tenant on notice of the intent to make a claim of that nature by way of a term in the tenancy agreement. However, where a tenant has abandoned the premises and the tenancy has ended with the abandonment, notice must only be given within a reasonable time after the landlord becomes aware of the abandonment and is in a position to serve the tenant with the notice or claim for damages.

In fact there are two other options the landlord has. He may refuse to accept the breach and collect pursue rent from the tenant each month. He may accept the tenant's repudiation, retake the premises and rent it out for a higher rent without recourse against the tenant.

If it is the landlord's choice to accept the tenant's breach and pursue the tenant for any loss of rent during the remainder of the fixed term, he must give the tenant notice of that election. He should give that notice while the tenant is still in possession so that the tenant can choose to arrange her affairs accordingly. In the face of such a claim she might choose to stay or she might take steps to sublet or to make efforts to find a replacement tenant for the landlord.

In this case I find that the landlord did not give the tenant notice of his election. The idea of the tenant being responsible for March rent was not raised by the landlord, even at the end of February when it would have been plain that no new tenants were moving in for March 1. As well, the landlord by his own admission was not raising the prospect of a claim for March rent against the tenant in the hope that she would clean the premises under the impression that she was getting her deposit money back.

I therefore dismiss the landlord's claim for loss of rental income for March 2016.

Regarding the tenant's claim for a doubling of the deposit money, s. 38 of the *Act* requires that once a tenancy has ended and once the landlord has received a forwarding address from the tenant, he has a fifteen day period to either repay the deposit money or make an application against it. If he fails to comply, the landlord may still make an application for a monetary award against the tenant, but he is penalized by having to account to the tenant for double the amount of the deposit remaining at the end of the tenancy.

In this case the tenancy ended February 29, 2016. The landlord received the tenant's forwarding address in writing by March 6, at the latest. His application was submitted March 26. It is not clear when the filing fee was paid. The landlord has failed to comply

with s. 38 of the *Act* and the tenant is therefore entitled to a doubling of the deposit money to \$1500.00.

Lastly, at hearing the landlord pointed out that he was missing work in his day to day employment and sought compensation for that loss. I must decline to make any award in that regard. Loss of employment income due to attendance as a party at a dispute resolution hearing, whether in front of a residential tenancy arbitrator or a Supreme Court justice is not compensated, except perhaps for extreme cases where exemplary damages are awarded. That is not the case here. Each side had a fair position to put forward at this dispute hearing.

### Conclusion

The landlord is entitled to a monetary award totalling \$245.00 plus recovery of the \$100.00 filing fee.

The tenant is entitled to a monetary award of \$1500.00 plus recovery of the \$100.00 filing fee.

The tenant will have a monetary order against the landlord for the difference of \$1255.00.

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: October 23, 2016

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Residential Tenancy Branch

