



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has filed an amended application for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord.

The parties both appeared, each gave affirmed testimony and provided evidentiary material in advance of the hearing. The parties were given the opportunity to question each other respecting the testimony and evidence provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?
- Has the tenant established that the landlord should be ordered to comply with the *Act* or the tenancy agreement by returning the security deposit to the tenant?

### Background and Evidence

**The landlord** testified that this fixed term tenancy began on October 1, 2014 and expired on April 30, 2015 at which time it reverted to a month-to-month tenancy. The tenancy ended on

September 30, 2016. Rent in the amount of \$850.00 per month was payable under the tenancy agreement, a copy of which has been provided, and was increased to \$875.00 per month about 13 months after the tenancy began. Rent was due on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00, which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that no move-in condition inspection report was completed at the beginning of the tenancy, but the parties did a "walk-through." At the end of the tenancy the landlord completed a move-out condition inspection report in the absence of the tenant. The landlord sent it to the tenant to sign and return, but the tenant didn't do so.

The landlord received the tenant's forwarding address in writing on September 8, 2016.

The landlord has provided an amended Monetary Order Worksheet setting out the following claims:

- \$10.00 to replace a blind;
- \$3.00 for burned out light bulbs;
- \$20.00 for having to clean the oven at the end of the tenancy;
- \$20.00 for re-seeding the dead lawn; and
- \$2,625.00, being 3 months rent to cover the landlord's insurance deductible.

The landlord also testified that the day the tenant was moving out she told the landlord about water damage, being wetness in the basement. The landlord contacted a restoration company and insurance adjuster who confirmed that the water was coming from the downspout caused by the gutters not being directed away from the house. The roof and gutters were replaced in August, 2016. Carpets needed to be pulled up and flooring was damaged, paneling had to be taken off but is not damaged, however the restoration company had to get machines in there to deal with moisture. The landlord claims \$1,646.61 for removing moisture and removing carpets. The landlord has not yet replaced the carpets but they will cost \$2,213.71, and were about 7 years old at beginning of tenancy.

The landlord's insurance company says it doesn't fall under the landlord's policy, but the landlord has a small claims claim against the roofer to cover costs. The tenant didn't notify the landlord that there was moisture before it got bad. Carpets were wet in the entire basement and the tenant only told the landlord 1 day before she moved out that there was moisture in one corner of basement, despite the fact that the tenant's son moved furniture from that area and it was wet and moldy. Photographs have been provided.

The landlord spent 3 days cleaning the rental unit. The kitchen blind was damaged to the extent that it wouldn't drop down, and 6 light bulbs in the rental unit were burned out. No receipts have been provided for those items.

The landlord further testified that she wrote a note to the tenant stating that the landlord approved of the surface condition, but that was before the landlord had a closer look noticing that the water damage was a huge issue and before the landlord started cleaning.

The landlord wasn't able to re-rent until repairs were made and she lost 2 months and 3 weeks of rent because she wasn't advised of the wet basement. The landlord's \$2,625.00 claim for loss of rental revenue should be adjusted by one week. It was re-rented for \$900.00 on November 23, 2016.

**The tenant** testified that she wasn't there for the entire month of October, 2014 at the commencement of the tenancy, and the rental unit was not as impeccable as the landlord indicated. The tenant has provided a copy of an email from the landlord dated October 4, 2014 containing a list of issues, including areas not cleaned. The tenant did the cleaning because the landlord didn't.

The landlord arrived to complete the move-out condition inspection and walked through the rental unit. Neither party, nor realtors, noticed the wet carpet, and a report was not completed. The house was up for sale and a letter provided by the realtor indicates that the rental unit was in good condition, however a copy has not been provided. The landlord also wrote a note to the tenant saying that the condition was good and that the security deposit would be returned. Then the landlord said she didn't have the money and would have to return the security deposit in payments, to which the tenant agreed, but the landlord hasn't returned any portion of it.

The tenant sent a message to the landlord asking the landlord to call, and when she did, the tenant told the landlord about the dampness on the carpet. The landlord said she'd look at it when she arrived. The insurance adjuster wrote a letter to the tenant stating that it would have been difficult to notice the dampness. The insurance adjuster told the landlord that the leakage was on the opposite side of the wall from where the entertainment unit had been. It may have been leaking for a long time, but no one would have noticed. The tenant did everything required of a tenant, and the landlord told the tenant that if the tenant dropped the claim, the landlord would give back the security deposit. The tenant didn't respond so the landlord texted the tenant again saying that the landlord was making a claim for loss of 3 months rent.

The tenant has provided a Monetary Order Worksheet setting out the following claims:

- \$450.00 for return of the security deposit;
- \$450.00 for double the return of the security deposit; and
- \$100.00 as recovery of the filing fee.

### Analysis

A landlord is required to return a security deposit in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the

amount. Further, the *Act* requires a landlord to ensure that move-in and move-out condition inspection reports are completed in accordance with the regulations. If the landlord fails to do so, the landlord's right to make a claim against the security deposit for damages is extinguished, and I so find.

However, the landlord's right to make a claim for damages is not extinguished. Where a landlord makes a claim against a tenant for damages, the onus is on the landlord to establish the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists because of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to mitigate any damage or loss suffered.

In this case, absent any move-in or move-out condition inspection reports, there is no evidence to establish the condition of the rental unit at the beginning of the tenancy. The landlord testified that the tenant did not leave the rental unit clean, but the tenant disputes that testimony. The landlord testified that the roof was repaired in August, 2016 and that the moisture was caused by the downspout not being directed away from the house. The landlord also testified that she has sued the roofing company in Small Claims Court, but claims the costs involved with repairs as against the tenant because the tenant didn't advise the landlord sooner of the moisture. I have reviewed the evidentiary material of the parties, and it appears that the water damage came from more than 1 source. The tenant testified that wetness was not noticed by the tenant until moving out of the rental unit. I accept that testimony, considering that the landlord didn't notice either until she took a closer look and started cleaning. In the circumstances, I find that the landlord has failed to establish that the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement.

Having found that the landlord has failed to establish that damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement, I dismiss the landlord's claim for loss of rental revenue.

The landlord has not provided any receipts for replacement of the kitchen blind or for replacing light bulbs, and has therefore failed to establish element 3 in the test for damages, and I dismiss the landlord's claim for those items.

With respect to the landlord's claims for cleaning at the end of the tenancy and for the dead lawn, in the absence of the condition inspection reports, and considering the October 4, 2014 email that the landlord sent to the tenant about items that needed attention, I find that the landlord has failed to establish either of those claims.

The tenant's application for dispute resolution claims double the \$450.00 security deposit, however it is clear in the evidence that the tenant paid \$425.00 at the commencement of the

tenancy, not \$450.00. However, having found that the landlord's right to make a claim against the security deposit for damages is extinguished, I also find that the landlord's right to make a claim against the security deposit for loss of rental revenue is also extinguished. I find the tenant has established a monetary claim for double the amount of the \$425.00 security deposit, or \$850.00.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$950.00.

This order is final and binding and may be enforced.

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: December 30, 2016

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Residential Tenancy Branch