



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MNDC, MNSD, FF

### Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing.

The Landlord applied for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; to keep all or part of a pet damage deposit or security deposit, and to recover the cost of the application fee.

The Tenant applied for money owed or compensation for damage or loss under the Act, regulations or tenancy agreement; and for the return of double the amount of the security deposit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

The Parties testified that they have received each others evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Landlord testified that a previous hearing with the Tenant regarding the same dispute address resulted in the Landlord being granted an order of possession because the Tenant was not meeting health standards.

In reviewing the Decisions referred to by the Landlord, I find that the parties reached a settlement agreement to end the tenancy and there was no finding by an Arbitrator that the Tenant failed to meet health standards.

### Issues to be Decided

- Is the Landlord entitled to money owed or compensation?
- Is the Landlord entitled to keep the security deposit?
- Are the Tenants entitled to money owed or compensation?
- Is the Landlord entitled to recover the cost of the filing fee

### Background and Evidence

The parties testified that the tenancy commenced on June 1, 2010, and is currently a month to month tenancy. Rent in the amount of \$741.00 was due on the first day of each month. The Tenant paid a security deposit in the amount of \$350.00 to the Landlord.

The Landlord provided a copy of the tenancy agreement.

The Tenant testified that she moved out of the rental unit on May 1, 2016.

### Landlord's Application

The Landlord testified that the Tenant left the rental unit dirty and damaged at the end of the tenancy and the Landlord is seeking a monetary order in the amount of \$2,207.63 for the cost of cleaning and repairs. The Landlord provided a copy of a condition inspection report completed by the parties at the start and end of the tenancy.

### Cockroaches \$152.25

The Landlord is seeking compensation for the cost of having a pest control company treat the rental unit for a cockroach infestation. The Landlord submitted a copy of the tenancy agreement which includes a term that Tenants, who do not keep their suite clean and tidy, will be responsible for pest control fees.

The Landlord provided photographs of the rental unit showing it to be dirty at the end of the tenancy.

The Landlord submitted a copy of an invoice from a pest control company dated January 15, 2016, in the amount of \$152.25. The Landlord provided a letter from a pest control company dated January 7, 2016, that states the Tenant had put out insect dust and had done some spraying in an effort to control the infestation.

In response, the Tenant stated that she did not bring the cockroaches into the building. She submitted that it was another Tenant who lived above her that brought the cockroaches into the building.

Painting \$295.38

The Landlord testified that it cost \$295.38 for the painting material needed to paint the walls and ceiling of the rental unit. The Landlord testified that the Tenant was permitted to smoke in the unit and the unit was last painted in 2009.

In response, the Tenant testified that the Landlord did nothing in the unit for 10 years.

Labour for Painting \$250.00

The Landlord testified that it took three days to paint the rental unit. He testified that it took 28 hours at a fixed rate of \$250.00.

In response, the Tenant testified that the Landlord is required to paint the rental unit and the rental unit was not freshly painted before the Tenant moved in.

Garbage \$60.00

The Landlord submitted that the Tenant left the rental suite full of garbage and clutter at the end of the tenancy. The Landlord also testified that he had to pay to have the Tenant's garbage disposed of because she placed some of her garbage on the property by the garbage cans.

In response, the Tenant testified that she did not leave garbage in the apartment. She testified that the Landlord never got a second garbage bin. The Tenant testified that she had a company come and remove her garbage.

Carpet and Linoleum \$426.00

The Landlord testified that the Tenant is responsible for a portion of the cost to replace the carpet and linoleum in the unit. The Landlord testified that the carpet was filthy, and the linoleum flooring had holes in it. The Landlord testified that the carpet and linoleum were 10 years old. The Landlord is seeking 30% of the cost for replacing the carpet and linoleum.

In response, the Tenant testified that the carpet had 30 burn marks in it when she moved in. She submitted that she never damaged the linoleum flooring. The Tenant testified that she did not clean the carpet because it needed to be replaced.

Rent \$762.00

The Landlord is seeking May 2016, rent because he was unable to rent the unit out for May 2016. He testified that the Tenant left the rental unit in such poor condition, that it took time to paint and replace carpets, and to clean the unit to get it ready to rent out.

In response, the Tenant testified that the rental unit was damaged when she moved in.

Cleaning \$268.00

The Landlord testified that the stove, fridge, kitchen floor, and other areas required cleaning after the Tenant vacated. The Landlord submitted that the areas that required cleaning are documented on the move out inspection report. The Landlord provided color photographs of the interior of the rental unit taken at the end of the tenancy.

In response, the Tenant testified that she agrees that she did not clean the carpet, fridge, stove, curtains, or windows. She testified that the bathroom needed to be gutted.

Tenant's Application

The Tenant is seeking the return of double the amount of the security deposit.

In response, the Landlord testified that he never received a forwarding address from the Tenant until he was served with the Notice of Hearing. The Landlord submitted that the Tenants sister signed over the security deposit at the time of the move out inspection due to the cleaning that was required and the damage that was present.

Analysis

Tenant's Application: Security Deposit

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

*The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the*

*tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.*

*If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.*

The Landlord and Tenant testified that the Tenant did not provide her forwarding address to the Landlord in writing prior to applying for Dispute Resolution. The Tenant applied for Dispute Resolution on June 22, 2016, and the Landlord counter filed on July 5, 2016, after being served with the Notice of Hearing.

I find that the Landlord applied to keep the security deposit within 15 days of receiving the Tenant's forwarding address in accordance with section 38 of the Act. Therefore, the doubling of the deposit under section 38 of the Act does not apply.

In addition, the Tenant testified that she gave her sister permission to act on her behalf at the end of the tenancy. I find that the \$350.00 security deposit was signed over to the Landlord by the Tenant's sister on May 1, 2016.

The Tenant's application for the return of double the security deposit is dismissed.

#### Landlord's Application

##### Cleaning \$268.00

I find that the Tenant left the rental unit in a very dirty condition at the end of the tenancy. The Landlord is granted \$268.00 for having to clean the rental unit.

##### Cockroaches \$152.25

There is insufficient evidence from the Landlord to establish that the Tenant is responsible for bringing cockroaches into the rental property. I find that the Tenant is not responsible for the cost of the pest control. I find that the Tenant took some steps to deal with the problem by putting out dust and spraying.

The Landlords claim for \$152.25 is dismissed.

##### Painting \$295.38

The Landlord is responsible for painting the interior of the rental unit at reasonable intervals.

Residential Tenancy Policy Guideline #40. Useful Life of Building Elements is a general guide for determining the useful life of building elements for considering applications for damages. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances. If the arbitrator finds that a Landlord makes repairs to a rental unit due to damage caused by the Tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the Tenant's responsibility for the cost or replacement.

The Guideline indicates that interior painting has a useful life of 4 years.

The Landlord testified that the unit was last painted in 2009. I find that the interior paint was seven years old. The Landlord is responsible to paint at reasonable intervals. I find that the Tenant is not responsible for the costs for painting. The Landlord's claim for painting and materials is dismissed.

Labour for Painting \$250.00

The Landlord testified that the unit was last painted in 2009. I find that the useful life of the interior paint had passed. The Landlord is responsible to paint at reasonable intervals. I find that the Tenant is not responsible for the costs for painting.

The Landlords claim for the cost of painting is dismissed.

Garbage \$60.00

I award the Landlords \$60.00 for disposal of garbage. The inspection report signed by the Tenant's sister indicates that the Landlord had to order an extra container because the Tenant filled up the container with her junk.

Carpet and Linoleum \$426.00

The Useful Life of Building Elements Guideline states that carpets and flooring have a useful life of 10 years.

While I find that the Tenant left the rental unit dirty and the carpets unclean, I find that the carpet and linoleum were 10 years old.

The Landlords claim for \$426.00 for replacement of the carpet and linoleum is dismissed.

Rent \$762.00

I find that the Tenant is partially responsible for the loss of rent suffered by the Landlord for May 2016.

The Tenant testified that she left the rental unit dirty. The delay in having the rental unit ready to rent out, due to painting, and carpet and linoleum installation, is not a delay I find the Tenant is responsible for. These items were past their useful life expectancy, and the Landlord should bear these costs, and the delay these repairs caused. However, I find that the Tenant left the rental unit in an extremely dirty state and the Landlord had to perform extensive cleaning.

I grant the Landlord half a month of rent in the amount of \$381.00 for the loss of May 2016, rent.

In total, I award the Landlord the amount of \$709.00

#### Filing Fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord had some success with his application, I order the Tenant to pay the \$100.00 cost of the filing fee for this hearing.

The Landlord has established a monetary claim in the amount of \$809.00.

I order that the Landlord can keep the security deposit of \$350.00 in partial satisfaction of the \$809.00 that the Tenant owes the Landlord.

After setting off the amount of the security deposit, I grant the Landlord a monetary order in the amount of \$459.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

#### Conclusion

The Tenant left the rental unit unclean at the end of the tenancy. The Landlord is granted a monetary order in the amount of \$459.00

The Tenant's application for the return of double the security deposit was not successful and is dismissed.

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: January 17, 2017

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Residential Tenancy Branch