



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      FF, MNSD, MNR & MNDC

### **Introduction**

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$1000 for damage to the rental unit
- b. An order to keep the security deposit and pet damage deposit for loss of rent in the sum of \$1600.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenants by mailing, by registered mail to where the Tenants reside on December 9, 2016. With respect to each of the applicant's claims I find as follows:

### **Issue(s) to be Decided**

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit for loss of rent?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

### **Background and Evidence**

The parties entered into a 6 month fixed term written tenancy agreement that provided that the tenancy would start on August 1, 2016. The tenancy agreement provided that the tenant(s) would pay rent of \$1600 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$800 and a pet damage deposit of \$800 at the start of the tenancy.

The tenant testified they felt the landlord was harassing them and they proposed that the parties enter into a Mutual Agreement to End the Tenancy in September 2016. The landlord refused. The landlord served a one month Notice to End Tenancy that set the end of tenancy for the end of November. The tenants filed an Application to Dispute this Notice which was scheduled to be heard on December 21, 2016. On November 25, 2016 the tenants advised the landlord in writing that they would be moving out on December 1, 2016 as per the eviction notice. .

The tenants vacated the rental unit on that date.

#### Landlord's Application - Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Section 7 of the Act states as follows:

#### **Liability for not complying with this Act or a tenancy agreement**

7 (1) if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim to establish the following:

- a. Proof that the damage or loss exists
- b. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- c. Verification of the Actual amount required to compensate for loss or to rectify the damage
- d. Proof that the claimant followed section 7(2) of the Act by doing whatever is reasonable to minimize the damage or loss

#### Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I dismissed the landlord's claim to keep the security deposit and pet damage deposit for loss of rent for December. The landlord chose to serve a one month Notice to End Tenancy on the Tenants which set the end of tenancy for December 1, 2016. The Residential Tenancy Act gives the tenants the legal right to dispute the Notice. The tenants subsequently complied with the Notice to End Tenancy and moved out on December 1, 2016. The landlord failed to prove the tenant has breached the Act or tenancy agreement in a way that would allow the landlord the right to claim for loss of rent. The landlord failed to prove she would have rented the rental unit had the tenants failed to dispute the Notice.
- b. The landlord claimed \$150 for the cost of repairing 5 nail holes and 3 pinholes in the children's room. She claimed \$50 for paint and \$100 for labor. She testified she did the work. The landlord failed to provide a receipt for the paint. I determined the amount claimed was excessive for the work done. In the circumstances I determined the landlord is entitled to \$75 for this claim.
- c. I determined the landlord is entitled to \$46.21 for the cost of repairing 5 window blinds.
- d. I dismissed the landlord's claim of \$100 for the cost of repairing a deck sliding door as the landlord failed to provide sufficient proof to establish this claim.
- e. I determined the landlord is entitled to \$199.25 for the cost of cleaning. The landlord provided a receipt from the cleaning company to establish this claim.
- f. I determine the landlord is entitled to \$40 for the cost of cleaning poop of the tenant's dog. The landlord claim \$80 but failed to provide sufficient proof to establish the quantum of this claim.
- g. I determined the landlord is entitled to \$84.86 for the cost of materials to clean the stove top. She testified it took her 30 minutes to clean and 4 hours to find the

appropriate materials. I determined the landlord is entitled to \$20 for labor and I dismissed the balance of the claim of \$80 for labor. The landlord is entitled to \$104.86 for this claim.

- h. I determined the landlord is entitled to \$77.50 for the cost of replacing the toilet seat.
- i. I dismissed the landlord's claim of \$36.47 for the cost of replacing the front door lock as the landlord failed to prove the tenants caused the damage and failed to prove she incurred this expense.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$542.82 plus the \$100 filing fee for a total of \$642.82.

#### Security Deposit

I determined the security deposit (\$800) and pet damage deposit (\$800) totals \$1600. I ordered that the landlord is entitled to retain \$642.82 of the security deposit leaving a balance of \$157.18 and \$800 for the pet damage deposit.. I further ordered that the landlord pay to the Tenants the balance of the security deposit (\$157.18) and the pet damage deposit (\$800) totaling \$957.18.

It is further Ordered that this sum be paid forthwith. The parties are given a formal Order in the above terms and the applicant must be served with a copy of this Order as soon as possible.

Should the applicant fail to comply with this Order, the 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 section 9.1(1) of the Residential Tenancy Act.

Dated: January 12, 2017

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Residential Tenancy Branch