



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution, filed July 12, 2016, she requested return of her security deposit and recovery of the filing fee.

The Landlord's application, filed January 11, 2016, he indicated he sought monetary compensation for damage to the rental unit, and recovery of the filing fee.

The hearing was scheduled to occur by teleconference on January 10, 2017 at 3:00 p.m. and adjourned to February 6, 2017 by Interim Decision dated January 11, 2017. This Decision is to be read in conjunction with my Interim Decision.

### Issues to be Decided

1. Is the Tenant entitled to return of double her security deposit?
2. Is the Landlord entitled to compensation for damage to the rental unit?
3. Should either party recover the filing fee?

### Background and Evidence

The Tenant testified that the tenancy began October 15, 2013 and that she paid a security deposit in the amount of \$825.00.

The Tenant confirmed that the Landlord did not do a move in condition inspection report when she first moved in.

The Tenant testified that the tenancy ended December 1, 2015. The Tenant stated that they did a “walk through”, although they did not do a formal move out condition inspection report. She stated that she and the Landlord agreed that she could have her security deposit back less the amount for the carpet shampooing as her carpet shampooer stopped working while she was cleaning the carpet. This agreement was evidenced in a document submitted in evidence which reads as follows:

“Damage deposit less carpet cleaning to be returned from [Landlord] to [Tenant]. Depending on what the cost of carpet cleaning is it will be deducted from damage deposit.”

She stated that at the time she did not know the amount of the carpet cleaning, but she called around the next day and found out that the average was between \$100.00-\$200.00; she stated that she also gave him these prices.

The Tenant claimed that she provided the Landlord her forwarding address in writing before she gave him the keys, and she also left a note on the counter for the new renters so that they could forward her mail. She stated that she did not have a copy of either letter. She also stated that she and the Landlord did text message for the first bit when he stated that she was not going to receive her security deposit. When I asked her if she sent him text messages regarding the letter she allegedly gave him to confirm his receipt of her forwarding address she stated that she did not.

The Landlord also testified on his own behalf. He stated that initially he did a “verbal move in inspection”. He claimed that at the time he was not aware of the requirement to do a formal report.

The Landlord denied receiving the Tenant’s forwarding address in writing. He confirmed that he tried to reach the Tenant by telephone, but she did not answer and did not return his calls. As noted in my Interim Decision he also testified that although the Tenant applied for Dispute Resolution on July 12, 2016, he did not receive notice of her application or the hearing until late December 2016. He filed for Dispute Resolution on January 11, 2017.

The Landlord claimed the sum of \$3,000.00 for cleaning and repair of the rental unit.

The Landlord confirmed that the carpet was “fairly new” when the subject tenancy began. He stated that just before the tenancy began, he bought the house and that the person from whom he purchased the home stated that he had put in new carpet.

The Landlord submitted in evidence a receipt for the installation of the laminate flooring in the amount of \$2,415.00 and the cost of the material in the amount of \$835.93 (notably, although the date the receipt as printed was January 12, 2017, the date of the pick-up of the flooring was noted as December 15, 2015).

Also introduced in evidence was a receipt for the moulding in the amount of \$425.82. Notably, this receipt was dated November 2015 and the "ship to address" is the Landlord's home. The Landlord testified that the moulding was delivered to "old house" meaning the rental unit.

The Landlord confirmed that although the receipts total \$3,676.75, he was only requesting \$3,000.00 for the cost to replace the flooring.

The Landlord also submitted that the Tenant did not remove her items as claimed and as evidenced by the receipts relating to disposal of her things.

The Landlord stated that he had to put in a new stove for the new renter because the stove was not able to be cleaned. He also noted that he also had to fix the wall.

The Landlord confirmed that while he signed the letter regarding her deposit, he wrote "depending on the cost of the carpet cleaning will be deducted from your deposit". The Landlord also said that when he found out that the carpet could not be cleaned and needed to be replaced, the Tenant refused to answer his phone calls. He also stated that he wanted to talk to her about the garbage and the condition of the rental unit but she did not answer the phone.

The Landlord stated that he tried to work this out with the Tenant. He confirmed that he had issued many notices to end tenancy in the past, but let her stay because he wanted to help her. He further stated that he was very upset with the condition of the rental unit when she moved out.

In response to the photos submitted by the Landlord, the Tenant stated as follows:

- She claimed that the photos of the outside were not taken at the time she moved out but rather *while* she was moving out. She further stated that she removed her pots and chairs.
- She claimed that the deck was cleaned at the time she moved out, although she stated that the Landlord told her not to worry about it as he was going to pressure wash the deck.

- She stated that she did not clean the oven as she had to clean it when she moved in.
- She confirmed that the carpets needed to be cleaned.
- She stated that the washing machine was as depicted.

In terms of the receipts submitted by the Landlord the Tenant noted that one of the receipts was paid November 2, 2015 and since she moved out December 1, 2015, and as such she questioned whether this related to the rental unit or his new house. The Tenant stated also stated that the mouldings (as evidenced by the November 2, 2015) did not come to the house, as she was still living there.

### Analysis

The Tenant seeks return of double the security deposit paid.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

The parties did not complete a move out condition inspection report as required by the *Residential Tenancy Act*. However, the parties did meet on the final day of the tenancy to do a “walk through”.

I find that the parties reached an agreement on December 1, 2015 that the Landlord could retain a portion of the Tenant’s security deposit towards the cost to clean the carpets. This agreement was evidenced in writing and was signed by the parties.

The Tenant testifies that the Landlord failed to return the balance of the security deposit as agreed. She further claims to have provided the Landlord with her forwarding address in writing on the date she moved from the rental unit. She was unable to provide a copy of this letter in evidence. The Landlord denies receiving the Tenant’s forwarding address.

I am unable, on the evidence before me to find that the Tenant provided the Landlord with her forwarding address in writing as required by the *Act*. I find it more likely that the Landlord was provided with her address for service when he received notice of the January 10, 2017 hearing; I accept his testimony that he received the hearing package in late December 2016. I also note that the Tenant claimed to have provided the

Landlord with her forwarding address in writing on the day she moved out, yet she also testified that she had text communication with him about the deposit following the end of the tenancy, yet she apparently did not communicate with him about the fact he had her forwarding address.

A forwarding address only provided by the tenant on the Application for Dispute Resolution form does not meet the requirement of a separate written notice as required by the *Act*.

I find that the Landlord received the Tenant's forwarding address on January 10, 2017, the date of the initial hearing.

Section 39 of the *Residential Tenancy Act* provides as follows:

**Landlord may retain deposits if forwarding address not provided**

**39** Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

As this is outside the one year required by section 39, the Landlord is permitted to retain the Tenant's **\$825.00** security deposit. Consequently I also dismiss the Tenant's claim for return of her security deposit.

As I have found the parties reached a comprehensive agreement on December 31, 2015, namely that the Landlord was entitled to the cost of cleaning the carpets, I also dismiss the Landlord's claim for further monetary compensation.

I accept the Tenant's evidence that she and the Landlord walked through the rental unit on the date she moved out. The condition of the rental unit was apparent to both parties at that time. While the Landlord may have subsequently found the carpets were not able to be cleaned and required replacement that does not negate the agreement he had with the Tenant. His time to raise issues with the Tenant as to the condition of the rental was on that date.

Further, I note that the Landlord failed to submit compelling evidence as to the age of the carpets at the time the tenancy ended; he simply stated that the former owner told him the carpets had been replaced. As such, it is possible the carpets would have been

beyond their useful life of 10 years as provided for in *Residential Tenancy Policy Guideline 40*.

As well, the Landlord claims the cost of replacing the carpet with laminate flooring. He did not provide evidence with respect to the cost to install comparable carpet. A Landlord cannot ask to be put in a better place following a tenancy, and I find, by installing laminate flooring, it is likely the Landlord failed to minimize his as required by section 7 of the *Act*.

Further, I note that the Landlord claimed he discovered the carpets required replacement after the walkthrough; yet, the invoice for the mouldings is dated *before* the end of the tenancy and as such before he claims to have discovered the carpets required removal. I find it unlikely that this invoice relates to the rental unit.

For the above reasons I find the Landlord has failed to prove his claim, and I therefore dismiss the Landlord's request for monetary compensation in the amount of \$3,000.00.

I find the parties are to bear the cost of their filing fees.

### Conclusion

The Tenant failed to provide her forwarding address in writing to the Landlord within one year as required by the *Act*. The Landlord is entitled to retain her security deposit.

The parties reached an agreement on December 1, 2015 which precludes the Landlord from seeking additional compensation. Further, the Landlord failed to prove his claim for \$3,000.00.

The parties are to bear the cost of their respective filing fees.

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: February 16, 2017

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Residential Tenancy Branch

