



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This is an application brought by the Landlord requesting a monetary order in the amount of \$932.25, requesting recovery of the \$100.00 filing fee, and requesting an order to retain the full \$300.00 security deposit towards the claim.

The applicant testified that the respondent(s) were served with notice of the hearing by registered mail that was mailed on August 17, 2016 however the respondent(s) did not join the conference call that was set up for the hearing.

Pursuant to section 90 of the Residential Tenancy Act, documents sent by registered mail are deemed served five days after mailing and therefore it is my finding that the respondent(s) have been properly served with notice of the hearing and I therefore conducted the hearing in the respondent's absence. The respondents were obviously aware of the hearing as they had sent in some evidence in response to the landlords claim.

The landlord's testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not the landlord has established monetary claim against the tenants, and if so in what amount.

Background and Evidence

The landlord testified that this tenancy began in January of 2015 and that the tenants vacated the rental unit at the end of January 2016.

The landlord further testified that the tenants only paid a \$300.00 security deposit.

The landlord further testified that a move in inspection was done at the beginning of the tenancy; however she did not fill out a move-out inspection report at the end of the tenancy, as she expected the tenants to bring a copy of the form, and they did not.

The landlord further testified that she received a forwarding address in writing from the tenants on January 31, 2016.

The landlord testified that she had originally been claiming \$37.00 in outstanding rent; however that rent was subsequently paid, and she is therefore withdrawing that portion from this claim.

The landlord further testified that the walls in the rental unit were in good condition when the tenants moved in, however the tenants had put up some cupboards without permission, and, when they took the cupboards down, there were large holes left in the walls which had to be repaired and painted, and her cost to have that work done was \$630.00.

The landlord further testified that the tenants pet ruined the carpet in the rental unit with pet urine, and they were unable to get the smell out, and therefore that carpet had to be replaced at a cost of \$167.97.

The landlord further testified that the tenant's cat clawed the curtains, leaving holes in the curtains, and the curtains had to be replaced at a cost of \$22.38.

The landlord further testified that the tenants were supposed to maintain the yard at the rental property however when the tenants vacated the yard was badly overgrown and she had to hire a person to restore the yard. The lawn was so long that they had to use a weed Wacker first before they could even mow it. The cost of the yardwork was \$75.00.

The landlord is therefore requesting a monetary order as follows:

Cost to repair and paint damaged walls	\$630.00
Cost to replace urine soaked carpet	\$167.97
Cost to replace Scratched curtains	\$22.38
Yard maintenance and cleanup	\$75.00
Filing fee	\$100.00
Total	\$995.35

### Analysis

It is my finding that the landlord has shown that the tenants left the walls in the rental unit in need of repair and painting, and I therefore allow the landlords claim for the cost of that work.

I also accept the landlords testimony a carpet in the rental unit was destroyed, and I therefore also allow the landlords claim for the replacement cost of that carpet.

It is also my finding that the landlord has shown that some curtains in the rental unit were destroyed by the cats claws, and I therefore allow that portion of the claim.

Further, the landlord has provided ample photo evidence to show that the rental property was left in need of significant yardwork and cleanup, and I therefore also allow the landlords request for the cost of having that work done.

Having allowed the majority of the landlords claim, I also allow the request for recovery of the landlords filing fee.

Therefore the total amount of the claim that I have allowed is as follows:

Cost to repair and paint damaged walls	\$630.00
Cost to replace urine soaked carpet	\$167.97
Cost to replace Scratched curtains	\$22.38
Yard maintenance and cleanup	\$75.00
Filing fee	\$100.00
Total	\$995.35

The landlord is also requesting an order to retain the security deposit towards this monetary claim however section 36(2) of the Residential Tenancy Act states:

**36(2)** Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b) having complied with section 35 (2), does not participate on either occasion,  
or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

In this case the landlord has testified that she did not complete a moveout inspection report, and also testified that she did receive a forwarding address in writing from the tenant's on January 31, 2016.

Therefore since the landlord did not complete a move-out inspection report, the landlord did not have the right to claim against the security deposit for damages and the landlord was required to return the deposit within 15 days of receiving a forwarding address in writing.

Further section 38 of the Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

Although the landlord did apply for dispute resolution within 15 days, since she did not have the right to file such a claim, she is still required to pay double the amount of the security deposits.

The tenants paid a security deposit of \$300.00, and therefore the landlord must pay \$600.00 to the tenants, and therefore that amount will be set off against the amount I have allowed of the landlords claim.

### Conclusion

Pursuant to section 67 of the Residential Tenancy Act, I have allowed \$995.35 of the landlords claim, and I therefore set off the \$600.00 amount of double security deposit that the landlord is required to pay to the tenants, and I have issued a monetary order for the tenants to pay \$395.35 to the landlord.

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 28, 2017

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Residential Tenancy Branch

