



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; the tenant; and her witness.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to and cleaning of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 37, 38, 67, and 72 of the *Residential Tenancy Act* (Act).

### Background and Evidence

The parties agreed the tenancy began in December 2011 as a month to month tenancy for a monthly rent of \$1,000.00 due on the 1<sup>st</sup> of each month with a security deposit of \$500.00 paid on November 27, 2011.

The parties agreed that prior to the end of the tenancy there was a problem with the toilet in the rental unit. The landlord submitted that when her plumber could not dislodge the problem with the toilet and so it was replaced. The landlord testified that

when the original toilet was removed the plumber broke it to determine what was causing the blockage.

The landlord submitted that when the toilet was broken a stick of deodorant was found to be the cause of the blockage. The tenant stated that the landlord only told her that it was a stick of deodorant causing the blockage but that the plumber had already broken the toilet and did not show the tenant any evidence of the deodorant.

The landlord submitted a receipt from her plumber in the amount of \$250.00 that included a new toilet; parts; and labour to install it, dated July 26, 2016.

The landlord submitted that she completed a “walk through” with the tenant on August 2, 2016, the day the tenant vacated the rental unit. She submitted that the tenant was rushed and did not want to participate in the move out inspection. The landlord stated that the tenant told her verbally that she could keep the security deposit for cleaning; carpet cleaning; and toilet replacement.

The tenant submitted that the landlord did not complete a move in or move out inspection or provide a Condition Inspection Report at the start or end of the tenancy. While the landlord acknowledged that she had not completed a move out Condition Inspection Report she was certain that her ex-husband had completed one at the start of the tenancy.

The landlord also submitted that the tenant failed to clean the rental unit sufficiently and as a result she had to hire someone to clean. She stated that the cupboards and appliances required substantial cleaning – up to 12 hours between herself and someone who helped her to clean.

Both the tenant and her witness provided verbal testimony in regard to the condition of the rental unit at the start and end of the tenancy. Specifically they both indicated that the unit was much cleaner at the end of the tenancy than it was at the start of the

tenancy and that during the tenancy the tenant and her witness actually improved the condition of the rental unit by doing things like painting it.

The tenants witness stated that he was not sure specifically what day the tenant returned possession of the rental unit but that when he was there to help the tenant move out he felt that the last time he was in the unit the tenant had cleaned it sufficiently.

In support of this claim the landlord has submitted several photographs and a letter from her cleaner help stating that the cleaning included the oven and stove; fridge, all cupboards as they had sugar and other sticky foods all over them, the bathroom, the floors and bedrooms. The landlord claims \$100.00 for this cleaning.

The landlord also submitted photographic evidence and an invoice for carpet cleaning in the amount of \$147.00. The tenant testified that she had rented a carpet cleaner and a day or two before she moved out of the unit she cleaned the carpets. The tenant confirmed that she did not submit any evidence to confirm this statement.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32(2) states a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and Section 32(3) states 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 property by the tenant.

In regard to the landlord's claim for the cost of the replacement toilet, I am satisfied that during the tenancy, with the rental unit in possession of the tenant, the toilet was blocked. Despite the tenant's submission that she did not see what had caused the blockage I find she has provided no alternative explanation to the landlord's submission that the blockage was a foreign object.

On a balance of probabilities, I find the toilet was blocked as describe the landlord and pursuant to Section 32, the tenant or an occupant of the rental unit has caused the blockage. As a result, I find the tenant is responsible for the costs to replace the toilet and that the landlord has established that cost through her invoice.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I am satisfied from the landlord's documentary evidence including the photographs and written statements provides sufficient evidence to establish that the tenant failed to comply with the requirements under Section 37 to leave the unit reasonably cleaned. I find the landlord has established a need for at least 5 hours additional cleaning.

I am not persuaded by the tenant's witness's testimony that based on his last look around the unit was cleaned. I find the witness's description of his look around was cursory, at best, and not a thorough inspection to assess the details of cleaning cabinetry throughout the unit and/or appliances.

Residential Tenancy Policy Guideline #1 stipulates that a tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

As the tenant has provided no evidence to support her submission that she steam cleaned or shampooed the carpets just before the end of the tenancy or that she cleaned the carpets in such a manner at any time during the 5 year tenancy I find the tenant is responsible for carpet cleaning regardless of the landlord's submissions of the need to do so. Even so, I find the landlord's photographic evidence establishes that the carpets did require cleaning at the end of the tenancy.

Based on the above, I find the landlord has provided sufficient evidence to establish losses resulting from the tenancy totalling \$497.00. As the landlord was successful in all of her claim, I find she is also entitled to recover the filing fee for this Application for Dispute Resolution.

Section 23 of the *Act* requires that the landlord and tenant must complete an inspection of the condition of the rental unit on the day the tenant is entitled to possession of the unit or on another mutually agreed upon day. The landlord must offer the tenant at least 2 opportunities with the second offered time being offered in writing and in the approved form.

Section 23(4) requires the landlord to complete a Condition Inspection Report with both the landlord and tenant signing the report. Pursuant to Section 18 of the Residential Tenancy Regulation the landlord must provide a copy of the Report to the tenant within 7 days after the inspection has been completed.

Section 24 of the *Act* states that the right of the landlord to claim against a security deposit for damage to the residential property is extinguished if the landlord does not comply with the requirement to offer the tenant 2 opportunities to attend the inspection;

if the landlord has provided 2 opportunities the landlord does not participate in the inspection; or complete the condition inspection report and give the tenant a copy as required under the Regulation.

Section 35 of the *Act* requires that the landlord and tenant must complete an inspection of the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon date. The landlord must offer the tenant at least 2 opportunities with the second offered time being offered in writing and in the approved form.

Section 17 of the Residential Tenancy Regulation stipulates that the landlord must offer a first opportunity to schedule the condition inspection by proposing one or more dates and times. If the tenant is not available at the time proposed the tenant may propose another time that the landlord must consider. If the time proposed by the tenant is not acceptable the landlord must propose a second opportunity by providing the tenant a notice in the approved form. The approved form is available on the Residential Tenancy Branch website.

Section 36(2) stipulates that unless the tenant has abandoned the rental unit, the right of the landlord to claim against the deposits for damage to the residential property is extinguished if the landlord has not complied with the requirements of Section 35 of the *Act* and Section 17 of the Regulation; or does not participate in the inspection or having completed the inspection does not complete a Condition Inspection Report and give a copy to the tenant within 15 days after it is completed and the landlord receives the tenant's forwarding address.

Despite all other testimony, the landlord acknowledges that she did not complete a move out Condition Inspection Report. As a result, I find the landlord has extinguished her right to claim against the security deposit, pursuant to Section 36(2).

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

In circumstances such as these, where the landlord's right to claim against the security deposit has been extinguished, pursuant to Section 36(2) of the *Act*, the landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit and the only option remaining open to the landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. I find that the landlord did not comply with Section 38(1) of the *Act*, as the landlord has not yet returned the deposits.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the landlord did not comply with Section 38(1) of the *Act*, I find that the landlord must pay double the pet damage deposit and security deposit to the tenant, pursuant to Section 38(6).

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$597.00** comprised of \$250.00 toilet replacement; \$100.00 cleaning; \$147.00 carpet cleaning and the \$100.00 fee paid by the landlord for this application.

I order the tenant is entitled to \$1,000.00 for return of double the amount of the security deposit.

I grant a monetary order to the tenant for return of the difference between what the landlord is entitled to receive and the amount the tenant is entitled to receive. I grant a monetary order in the amount of **\$403.00**. This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: February 28, 2017

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Residential Tenancy Branch