



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Did the Tenant leave the unit unclean and damaged?

If so, is the Landlord entitled to the costs claimed?

Was the Landlord's right to retain and claim against the security deposit extinguished?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: The tenancy started on April 1, 2015 and ended on July 30, 2016. At the outset of the tenancy the Landlord collected \$825.00 as a security deposit. The Parties mutually conducted a move-in inspection and a copy of the report was provided to the Tenant. The Landlord received the Tenant's forwarding address on August 15, 2016.

The Landlord cannot recall the exact amount of rent paid and believes it was \$1,650.00. The Tenant states that the rent was \$1,550.00 and that they also had to pay the Landlord \$100.00 at the same time for the management fee. The Landlord agrees that the rent was \$1,650.00 and that the Tenants were only required to pay the Landlord \$100.00 out of that amount while the rest was given to the owner. The Landlord states that after the Tenant moved out of the unit she no longer managed the unit.

The Landlord states that she emailed and texted the Tenant to conduct a move-out inspection but that the Tenant refused. The Landlord states that an inspection was conducted by the Landlord with a report filled out but no copy was provided to the Tenant. The Tenant states that the Landlord never offered any move-out inspection and simply told the Tenants to leave the unit well-cleaned because a new tenant, the owners' friend, was due to moving into the unit the next day. The Landlord provided no copies of the move-in or move-out report and no photos.

The Landlord states that the Tenant failed to leave the unit clean and undamaged and claims as follows:

- \$346.50 for the cost of cleaning the unit, including the carpets in the bedrooms and the stairs, invoice dated August 9, 2016 provided;
- \$1,130.00 for the cost of replacing the stair carpet left with stains, invoice provided. The Landlord states that the carpet was so stained that it required replacement. The Landlord states that the carpet was 6 years old; and
- \$16.63 for the cost of replacing a mail box key that was not returned at the end of the tenancy, invoice dated August 26, 2016 provided.

The Landlord states that because the unit was unclean the new tenants who arrived on August 1, 2016 refused to move into the unit. The Landlord states that she does not know when the new tenants eventually moved in as she returned the keys to the owner and no longer worked for the owner. The Landlord states that she thinks she returned

the keys to the owner when the carpet was replaced. The Landlord states that the cleaning and repairs to the carpet were done around August 10, 2016. It is noted that the carpet receipt is dated August 22, 2016. The Landlord states that the new tenants were to pay rent of \$1,650.00. It was noted that the Landlord provided evidence that the unit was advertised for \$1,700.00 per month and the Landlord states that the actual rent was negotiated with the owner. The Landlord claims lost rental income of \$850.00.

The Tenant states that they cleaned the unit thoroughly before they moved out including the carpets. The Tenant states that the carpets had stains on them at move-in.

The Landlord states that the Tenant failed to return a mail key. The Landlord was not sure when the key was replaced by the owner. The Landlord also says that she had bought a set of mail keys and provided the receipt. The Tenant states that one mailbox key was returned at move-out and that the second set was mailed to the Landlord a few days later.

### Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, 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. Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. Given the lack of inspection reports of the state of the unit at the onset of the tenancy and considering the Tenant's plausible evidence of pre-existing damage to the carpets I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused the damage that was existing at the end of the tenancy and I dismiss the claims for replacing the carpet.

I note that the Landlord's cleaning invoice indicates "detail clean up". Considering this and the Tenant's plausible evidence of reasonable cleaning and given the lack of any condition report or photos indicating the state of the unit at move-out I find that the Landlord has not substantiated on a balance of probabilities that the Tenants left the unit unreasonably unclean and I dismiss the claims for cleaning costs.

Given the undisputed evidence that the Tenants only returned one mail key, given the Landlord's supported evidence of purchasing another key and considering that the Tenant's provided no supporting evidence of mailing the extra key I find that the Landlord has substantiated that the Tenant failed to return a key. The Landlord is therefore entitled to the costs claimed of **\$16.63**.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Even if the Tenants left the unit unclean, there is no evidence that cleaners could not have been obtained the night before or the same day of the expected move-in. The Landlord's evidence of the new tenants and the details of their agreement to rent the unit, beyond not appreciating its state on the day of move-in, is non-existent or vague and evasive. I note the Tenant's undisputed evidence that the owner's friends were moving into the unit. I also consider the Landlord's vague evidence of when she ceased to work for the owner. I note that the Landlord states that she did not work for the owner for the next tenancy and I accept that for this reason the Landlord does not have sufficient evidence of what actually occurred with the ensuing rental of the unit, including what, if any, mitigation efforts occurred. Given the difficulties with the Landlord's evidence I find that the Landlord has not substantiated that the Tenant caused the Landlord a loss of rental income claimed

or that the Landlord acted to mitigate the losses claimed and I dismiss the claim for lost rental income.

Section 36 of the Act provides that where the landlord fails to offer at least two opportunities for a move-out inspection, the right of the landlord to claim against a security deposit for damage to the unit is extinguished. Given the lack of any supporting evidence of offers for a move-out inspection, considering the Tenant's persuasive evidence of discussion with the Landlord at move-out and given the lack of any copy of a move-out inspection completed by the Landlord I find on a balance or probabilities that the Landlord did not offer the Tenant an opportunity to inspect the unit. As a result I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished at move-out and the Landlord was required to return the security deposit in full.

Section 38 of the Act provides 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 repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit.

Policy Guideline #17 provides as follows:

Return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

As the Landlord's right to claim against the security deposit was extinguished and as the Landlord did not return the security deposit to the Tenant I find that the Landlord must now pay the Tenant double the security deposit plus zero interest of **\$1,650.00**. As the Landlord's claims have been primarily unsuccessful and as the Landlord breached the Act herself I decline to award the Landlord with recovery of the filing fee. Deducting the Landlord's entitlement of **\$16.63** from the **\$1,650.00** owed to the Tenant leaves an outstanding amount of **\$1,633.37**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,633.37**. If necessary, this order may be filed in the Small Claims 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: March 3, 2017

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Residential Tenancy Branch

