



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with monetary cross applications. The tenants applied for return of the security deposit. The landlords applied for compensation for damage and cleaning; and, authorization to make deductions from the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The tenants had submitted a USB stick as evidence; however, the landlord stated that he did not receive a USB stick from the tenants. The tenant acknowledged that he may not have given one to the landlord. Accordingly, I did not admit the USB stick as evidence and I have not considered it further.

The tenants had filed for return of a security deposit in the amount of \$925.00; however, during the hearing the parties were in agreement that the tenants had paid a \$925.00 “furniture deposit” in addition to the security deposit and the landlords are still holding both deposits. The tenant requested that the tenant’s application be amended to include return of the “furniture deposit” and the landlord was agreeable to the amendment.

The Act does not permit a landlord to collect a furniture deposit, even if the rental unit is furnished. Residential Tenancy guideline 29: *Security Deposits* provides the following, in part:

The Residential Tenancy Act permits a landlord to collect a security deposit<sup>1</sup>. Under that Act the issue often arises as to what a landlord may collect as a deposit or payment, other than the rent, at the commencement of a residential tenancy. The Act contains a definition of “security deposit”<sup>2</sup>, which also contains exclusions. As a result of the definition of a security deposit in the Residential Tenancy Act and the regulations, the following payments by a tenant, or monies received by a landlord,

irrespective of any agreement between a landlord or a tenant would be, or form part of, a security deposit:

- A furniture deposit in respect of furnished premises

In light of the above, the “furniture deposit” is considered to be part of the security deposit and I have amended the tenant’s application to reflect a request for return of a \$1,850.00 security deposit.

#### Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation for the amounts claimed?
2. Disposition of the security deposit.

#### Background and Evidence

The parties executed a tenancy agreement in September 2015 for a tenancy set to commence October 1, 2015. The tenants were required to pay rent of \$1,850.00 on the first day of every month. The tenants paid a security deposit of \$1,850.00 as described previously in this decision. The tenancy ended September 30, 2016.

A move-in inspection report was prepared at the start of the tenancy and a move-out inspection report was prepared at the end of the tenancy. The inspection reports were originally prepared in a language other than English; however, the notations were later translated for purposes of this proceeding.

The tenants were not in agreement with the deductions the landlord sought to make from their security deposit and the tenants did not authorize any deductions in writing.

### **Tenant's application**

The tenants seek return of the security deposit as it has not been refunded to them and they were not agreeable to the amounts the landlords seek to deduct from their deposit.

The tenant testified that he gave his forwarding address to the landlord at the move out inspection but the landlord claims it was not provided until the tenants served their Application for Dispute Resolution. The tenant acknowledged that he may have only provided the forwarding address orally at the move-out inspection.

Shortly after receiving the tenant Application for Dispute Resolution the landlord filed an Application for Dispute Resolution seeking authorization to make deductions from the security deposit.

### **Landlords' application**

Below, I have summarized the landlords' claims against the tenants and the tenant's responses.

Cleaning: \$360.00

The landlord submitted that the tenancy agreement includes a term that requires the tenants to pay the landlord a cleaning fee of \$350.00 to \$400.00 for a furnished unit and that there are no exceptions to this requirement. The landlord submitted that in September 2016 the tenants refused to pay the cleaning fee. The landlord sent an email to the tenants to permit the tenants to do their own cleaning but that it would have to be up to the landlord's cleaning standard and if not the landlord would deduct cleaning costs from the security deposit.

The landlord submitted that at the end of the tenancy it was determined that additional cleaning was necessary in the following areas: carpet stains, balcony, bathroom fans, baseboard, cabinet under sink, in the laundry area, and removal of chairs left on the balcony. The landlord hired a cleaning company to clean these areas at a cost of \$360.00 that the landlord seeks to recover this amount from the tenants.

The tenants responded that the carpeting was stained at the start of the tenancy and the tenant tried cleaning the stain with a little success. The landlord was of the position the tenant was referring to a different stain.

The tenant stated that furniture was left on the balcony by the previous tenant. The landlords never removed it and the tenants just left it there during their tenancy. The landlord pointed out that furniture on the balcony was not noted on the move-in inspection report.

The tenants hired a cleaning company at the end of the tenancy to clean the unit and the tenant acknowledged that areas of baseboards were missed.

The tenant stated that he did not notice that the bathroom fans were dirty but that they were likely dirty at the start of the tenancy.

The tenant acknowledged that the laundry area was not cleaned but claimed the area was dirty at the start of the tenancy.

The landlords seek to rely upon the condition inspection reports as evidence. I noted that on the move-in report the individual areas of the rental unit contained notations on every line; however, that level of detail was not done on the move-out report. Rather, the landlord only made notations on some lines and provided a summary of the condition of the rental unit at the end of the tenancy on the first page of the report. The tenant submitted that the summary appearing on the first page was written after he signed the report. The tenant claims that at the move-out inspection the only issues raised by the landlord were the furniture on the balcony and a stain on the carpet. The landlord acknowledged that the tenant was not provided a copy of the move-out inspection report at the time of the move-out inspection and that it was mailed it to the tenants along with the evidence for this proceeding.

In recognition that some of areas of the rental unit required further cleaning the tenant was of the position that \$50.00 would adequately compensate the landlord.

Window blind repair: \$100.00

The landlord submitted that one vane of the vertical blind was missing. The landlord obtained an oral estimate over the phone for the cost to replace the blind. The landlord has not had the repair made and does not have a receipt or other evidence to substantiate the amount claimed.

The tenant was of the position that there could have been was a piece of the blind missing at the start of the tenancy but that it may have been missed during the move-in inspection. However, the tenant was willing to compensate the landlord \$50.00 for damage to the blind.

#### Other costs

The landlord requested compensation for costs associated to filing, preparing for and participating in this dispute, including: the filing fee, the cost of a USB stick, mailing costs and the landlord's agent's time. The Act provides that an Arbitrator may award recovery of filing fee to a party but other costs associated to dispute resolution proceedings are not recoverable. I informed the parties that I shall consider the landlord's request for recovery of the filing fee but I dismissed the unrecoverable costs summarily.

#### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Upon consideration of everything before me, I provide the following findings and reasons with respect to each application.

#### **Tenant's application**

Section 38 of the Act provides that a landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

In this case, the tenancy ended September 30, 2016; however, I find there insufficient evidence to demonstrate that the tenants provided a written forwarding address to the landlord before making their application for return of the security deposit. Therefore, I find the tenants' application for return of the security deposit was premature.

The landlord filed an Application for Dispute Resolution to seek authorization to make deductions from the security deposit within 15 days of receiving the tenant's Application for Dispute Resolution that contained the tenant's forwarding address. Accordingly, I shall consider the disposition of the security deposit under the landlord's Application for Dispute Resolution.

Since the tenants' application was pre-mature I make no award for recovery of the filing fee paid by the tenants.

### **Landlord's Application**

Section 6 of the Act provides that if a term in a tenancy agreement contradicts or violates the Act, the term is not enforceable. I note that there are a number of terms in the tenancy agreement and Addendum that contract the Act, including term 12(a) in the Addendum which states:

"The rental unit should be cleaned up, upon the Tenant's departure. There shall be no odours of any sort in and outside of the premises when the Tenant leaves the premises..."

Tenant explicitly agrees that the cleaning work, done by professional cleaners, will be arranged by the landlord or the landlord's agent, NO EXCEPTIONS, and the cleaning fee shall be as following:

Studio: \$180 / 1 bdrm: \$250 / 2 bdrm 1 bth: \$300 / 2 bdrm 2 bth: \$350 - \$400"

Section 37 of the Act requires that the tenant leave the rental unit "reasonably clean" at the end of the tenancy. The Act does not oblige the tenant to hire professional cleaners or to pay the landlord's professional cleaners. Accordingly, I find the above described term exceeds the tenant's obligation as provided under the Act and the term is not enforceable.

If a tenant fails to leave the rental unit "reasonably clean" at the end of the tenancy section 7 of the Act permits the landlord to recover the cost to rectify the breach. Accordingly, the landlord may seek to recover the cost to bring the rental unit to a "reasonably clean" condition and nothing greater than that. Certainly, a landlord is at

liberty to bring the rental unit to a level of cleanliness that is greater than “reasonably clean” but the cost to do so is that of the landlord.

The landlord provided photographs of the dirty areas as evidence to demonstrate the unit was not left clean. The tenant acknowledged that some areas were not cleaned but was of the position the landlord’s request for compensation of \$360.00 is excessive and the tenant offered to compensate the landlord \$50.00. Below, I have considered whether the landlord’s claim for \$360.00 is reasonable.

The invoice for cleaning provided by the landlords includes a charge of \$200.00 for carpet cleaning. The tenant also claimed to have the carpet cleaned at the end of the tenancy. Both parties were in agreement that there was a stain in the carpeting at the end of the tenancy; however, the parties were in dispute as to whether the carpet had pre-existing stains. I note that the move-in inspection report indicates that the living room carpet was stained without further description of the size or location of the stain. Accordingly, I find I am unable to determine whether the stain(s) present at the end of the tenancy were the same or different from the stain(s) present at the start of the tenancy. Therefore, I find the landlords did not meet their burden of proof and I make no award for carpet cleaning.

The cleaning invoice provided by the landlords shows charges totalling \$160.00 for cleaning the balcony, bathroom fans, laundry area, under the kitchen cabinet and baseboards. There is no indication as to how many hours the cleaner spent on these items. Assuming a cleaning person is paid \$20.00 - \$30.00 per hour, the charge of \$160.00 would represent several hours. Upon review of the photographs provided to me by the landlords it would appear to me that a few hours of cleaning may be required but I doubt that several hours were necessary to bring the unit to a reasonably clean condition. Therefore, I find I prefer the tenant’s submission that \$50.00 is a more reasonable charge for the additional cleaning that was required and I award the landlords that amount.

As for the landlords’ claim for compensation for the missing vane from the vertical blind, I find the landlords failed to establish a loss of \$100.00 given the lack of an estimate, quote, receipt, or other evidence to substantiate the value of the blind. Since the tenant was willing to compensate the landlord \$50.00 for the missing piece, that is the amount I award the landlords.

As for recovery of the filing fee, I am of the view that had the landlords been more familiar with the requirements of the Act and been more reasonable in requesting

compensation from the tenants this application could have been avoided. Therefore, I make no award to the landlords for recovery of the filing fee from the tenants.

In light of the above, the landlord is authorized to deduct \$100.00 from the tenants' security deposit for cleaning and damage and I order the landlords to return the balance of \$1,750.00 without further day.

In keeping with Residential Tenancy Policy Guideline 17: *Security Deposits and Set-Off*, I provide the tenants with a Monetary Order in the amount of \$1,750.00 to serve and enforce upon the landlords if necessary.

### Conclusion

The landlords have been authorized to deduct \$100.00 from the tenant's security deposit for cleaning and damage and have been ordered the landlords to return the balance of \$1,750.00 to the tenants without further delay.

The tenants have been provided a Monetary Order in the amount of \$1,750.00 to serve and enforce upon the landlords if necessary.

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: May 17, 2017

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Residential Tenancy Branch