



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord: MND MNR MNSD MNDC FF  
For the tenant: MNSD FF O

### Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”). The landlord applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization to retain all or part of the tenant’s security deposit and/or pet damage deposit, and to recover the cost of the filing fee. The tenant applied for the return of her security deposit and pet damage deposit, to recover the cost of the filing fee and other unspecified relief.

The landlord and tenant attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither party raised any concerns regarding the service of documentary evidence.

### Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant’s security deposit and pet damage deposit under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on June 15, 2015 and ended on August 31, 2016 when the keys were returned to the landlord. The tenant paid a security deposit of \$425.00 and a pet damage deposit of \$200.00 at the start of the tenancy. Monthly rent of \$850.00 was due on the first day of each month.

The landlord has claimed \$11,422.75 on her application which I find does not match the landlord’s monetary order worksheet submitted in evidence in the higher amount of \$12,047.00.

The landlord was advised that due to the fact the landlord failed to properly amend her application in accordance with the Rules of Procedure, that I find it would be prejudicial to the tenant to increase the landlord's claim through the submission of documentary evidence. Therefore, the landlord was advised during the hearing that the landlord's claim was limited to the original claim of \$11,422.75 as claimed. The tenant has claimed \$500.00 for the return of the balance of her security deposit and pet damage deposit.

*Evidence for Landlord's Claim*

Regarding item 1 of the landlord's claim, the landlord has claimed \$10,290.00 which is comprised of her realtor's commission. The landlord alleged that she had arranged to have her home sold privately; however due to the condition of the rental unit, the buyer backed out of the private sale which forced the landlord to list her home for sale with a realtor who charged her \$10,290.00 in commission fees. The tenant did not agree with any portion of the landlord's monetary claim. This item was dismissed in full during the hearing due to insufficient evidence and the fact that I find that the decision to list her home with a realtor is solely that of the landlord and that the tenant is not responsible for that decision by the landlord.

Regarding item 2, the landlord has claimed \$800.00 for loss of September 2016 rent by claiming that the tenant had her personal items on the rental property until September 1, 2016. The parties confirmed that August 2016 rent was not due by the tenant has compensation for having received a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") which an effective vacancy date of August 31, 2016. There is no dispute that the tenant returned the rental unit keys to the landlord on August 31, 2016 as required. The tenant confirmed that she still had some plants on the rental unit property until the following day, September 1, 2016 but does not agree that she should have to pay a month of rent to the landlord as a result. Regarding item 3, the landlord has claimed \$870.00 which is comprised of three sub-items which will be described below and which will be described as sub-items 3A, 3B and 3C for ease of reference. Regarding sub-item 3A, the landlord is claiming \$485.00 for garbage removal and disposal of the garbage and junk personal items left on the side of the road including a desk by the tenant, which the landlord stated had to be disposed of properly and could not just be left on the side of the road.

Regarding sub-item 3B, the landlord has claimed \$135.00 for 5 hours bleaching, priming and repainting the rental unit. The landlord stated that the person who performed the cleaning was a friend of hers. The friend was the same person who expressed interest in purchasing the home and then backed out of buying the home due to the condition of the rental unit.

Regarding sub-item 3C, the landlord has claimed \$250.00 for 10 hours of cleaning of the rental unit at \$25.00 per hour left dirty by the tenant according to the landlord. The landlord confirmed that she did not complete a move-in inspection at the start of the tenancy. The landlord also confirmed that she did not perform an outgoing condition inspection report in writing at the end

of the tenancy. The landlord submitted over 40 photos in evidence in support of this portion of her claim.

Regarding item 4, the landlord has claimed \$87.75 for an unpaid hydro bill that the tenant agreed she owed during the hearing. The tenant also stated that she had agreed to not cleaning the behind the stove and fridge for another \$37.25 for a total amount of \$125.00 to be retained by the landlord for unpaid hydro costs and for failing to clean behind the stove and fridge of the rental unit.

#### *Evidence for Tenant's Claim*

The tenant has claimed for the return of \$500.00 which is comprised of \$425.00 of her security deposit and \$75.00 of her pet damage deposit. As indicated above, the parties agreed during the hearing that the tenant has surrendered \$125.00 of her combined \$625.00 in deposits for a balance of \$500.00 in combined deposits being requested from the landlord. The tenant clearly indicated during the hearing that she was not waiving any right to double the amount of \$500.00 if she was so entitled to it under the *Act*.

The landlord confirmed receiving the tenant's written forwarding address on August 31, 2016 on a pad of paper from the tenant. The tenant has agreed that she surrendered \$125.00 of her combined \$625.00 in deposits leaving a balance of her security deposit and pet damage deposit being retained by the landlord as \$500.00. The landlord submitted her claim to claim against the tenant's security deposit and pet damage deposit on April 27, 2017.

#### *Analysis*

Based on the documentary evidence and the testimony of the parties, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

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 sections 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 what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on both parties to provide sufficient evidence to prove their respective claims and to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the parties must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the other party did what was reasonable to minimize the damage or losses that were incurred.

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.

### **Landlord's monetary claim**

**Item 1-** As described above, this item was for \$10,290.00 and was related to the landlord's claim for her realtor's commission costs which has been dismissed in full during the hearing as I find that the landlord has failed to meet part one of the test for damage or loss described above.

**Item 2 –** Regarding this item, the landlord has claimed \$800.00 for the loss of September 2016 rent due to the tenant having some plants on the rental unit property until the September 1, 2016. I find the landlord has suffered no loss as she did not re-rent the rental unit and that plants outside for one day would not justify a month of lost rent and is unreasonable. Therefore, I find the landlord has failed to meet part two of the test for damage or loss described above and I dismiss this item in full without leave to reapply due to insufficient evidence.

**Item 3 –** Regarding item 3, the landlord has claimed for \$870.00 comprised of \$485.00 for garbage removal and disposal of junk personal items including a desk left on the side of the road by the tenant that had to be disposed of properly, \$135.00 for 5 hours of bleaching, priming and repainting, and \$250.00 for 10 hours of cleaning of a dirty rental unit. I have carefully reviewed the photo evidence and I find that the tenant has breached section 37 of the *Act* which requires the tenant to leave the rental unit in reasonably clean condition, less normal wear and tear. I find the rental unit was not left in a reasonably clean condition and that leaving some personal items including a desk on the side of the road is not reasonable and that the tenant is responsible for all \$870.00 in costs as claimed by the landlord and that the landlord has met the burden of proof. Therefore, I award the landlord **\$870.00** for item 3 as claimed.

**Item 4 –** As the parties reached a mutually settled agreement regarding item 4 which included the tenant agreeing for the landlord to retain **\$125.00** of her combined deposits comprised of \$87.75 for an unpaid hydro bill plus \$37.25 for cleaning behind the stove and fridge that the tenant confirmed she did not clean. The parties were reminded during the hearing that any agreements made were voluntary and once made were bind and enforceable under section 63 of the *Act*.

As the landlord's application had merit, I grant the landlord the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

**Tenant's monetary claim**

There is no dispute that the tenant provided her written forwarding address and that the landlord had received it on August 31, 2016. The landlord did not return the combined \$500.00 deposit balance or claim towards the tenant's combined deposits of \$500.00 until April 27, 2017. Section 38 of the *Act* applies and states in part:

**Return of security deposit and pet damage deposit**

**38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of**

**(a) the date the tenancy ends, and**

**(b) the date the landlord receives the tenant's forwarding address in writing,**

**the landlord must do one of the following:**

**(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;**

**(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.**

**(6) If a landlord does not comply with subsection (1), the landlord**

**(a) may not make a claim against the security deposit or any pet damage deposit, and**

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

[My emphasis added]

Based on the above, I find the landlord breached section 38 of the *Act* by failing to return the tenant's combined deposits within 15 days of August 31, 2016 which was date the tenancy ended and the same date the tenant provided the landlord with her written forwarding address. I find the landlord had until September 15, 2016 to return the tenant's combined deposit balance of \$500.00 in full as I find the landlord had already extinguished her right to claim against the tenant's security deposit or pet damage deposit pursuant to section 24 of the *Act* by failing to complete an incoming condition inspection report as required by section 23 of the *Act*. I also note the landlord failed to complete an outgoing condition inspection report as required by section 35 of the *Act*. Therefore, I grant the tenant double her original security deposit and pet damage combined deposits balance of \$500.00 as follows:

- Combined deposits balance of \$500.00 doubles to **\$1,000.00**

As the tenant's application had merit, I grant the tenant the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

I find the landlord has established a total monetary claim in the amount of **\$1,095.00** comprised of \$870.00 for item 3, \$125.00 for item 4, plus the recovery of the cost of the \$100.00 filing fee.

I find the tenant has established a total monetary claim in the amount of **\$1,100.00** comprised of \$1,100.00 for the doubled security deposit and pet damage deposit balance of \$500.00 and the recovery of the cost of the filing fee in the amount of \$100.00.

Based on the above, I find that the tenant has established a monetary claim which is **\$5.00** greater than the landlord's monetary claim. As a result, I offset the two amounts owing, and I **grant** the tenant a monetary order pursuant to section 67 of the *Act*, for the balance owing by the landlord to the tenant in the amount of **\$5.00**.

I **caution** the landlord to comply with sections 23, 35 and 38 of the *Act* in the future.

I **caution** the tenant to comply with section 37 of the *Act* in the future.

#### Conclusion

Both the landlord's and the tenant's applications had merit.

I find that the tenant has established a monetary claim which is \$5.00 greater than the landlord's monetary claim. I have offset the two amounts owing, and the tenant has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the landlord to the tenant in the amount of \$5.00. Should the tenant wish to enforce this monetary order, the tenant must first serve the landlord and the order may then be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: June 5, 2017

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Residential Tenancy Branch