



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MURRAY HILL DEVELOPMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, OLC, MNR, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (“the “Act”).

On January 6, 2017, The Landlord filed an Application requesting an order of possession; a monetary order to recover unpaid rent and /or utilities; to retain the security deposit; and to recover the cost of the filing fee.

On February 7, 2017, The Tenant filed an Application for the return of the security deposit; for the Landlord to comply with the Act; and to recover the cost of the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The parties testified that they exchanged the documentary evidence before me. Both participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, 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.

### Preliminary and Procedural Matters

The parties testified that the Tenant moved out of the rental unit on December 27, 2016. Since the Tenancy ended when the Tenant move out of the rental unit, the Landlord's request for an order of possession is not required.

### Issues to be Decided

- Is the Landlord entitled to the monetary relief sought for unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?
- Is the Tenant entitled to the return of double the security deposit?

### Background and Evidence

The Parties testified that the tenancy began on April 1, 2016, as a six month fixed term tenancy. The parties do not agree on whether the tenancy continued for an additional 3 months, as a month to month tenancy, or as a 3 month fixed term. The Landlord provided a lease which was signed by the Tenant, but it was later retracted by the Landlord due to an incorrect Tenant name on the contract. The Tenant submitted that the amended lease was never signed. Rent in the amount of \$1,100.00 was due on the first day of each month. The Tenant paid the Landlord a security deposit of \$550.00. The Landlord provided a copy of the tenancy agreements.

### Landlord's Application

#### January 2017, Rent \$1,100.00

The Landlord testified that the Tenant did not comply with the Act by giving the Landlord proper notice to end the tenancy.

The Landlord testified that he was able to rent the unit out for the month of January 2017, and he did not suffer a loss of rental income.

#### Carpet Cleaning \$90.00

The Landlord submitted that the carpet was dirty when the Tenant moved out of the rental unit and the carpet needed to be shampooed. The Landlord submitted that the

condition inspection report completed at the end of the tenancy supports his testimony carpet was left dirty. The Landlord provided a receipt for the carpet cleaning.

In response, the Tenant stated the carpet was clean. The Tenant testified that the Tenant did not shampoo the carpet prior to moving out.

#### Cleaning Costs \$105.00

The Landlord submitted that the rental unit was left dirty when the Tenant moved out. The Landlord provided black and white photographs taken on December 29, 2016, of the interior of the rental unit in support of his claim. The Landlord provided a document for the cleaning of the rental unit that indicates the interior of the unit was cleaned for 4 hours on December 28, 2016. The Landlord provided a copy of the condition inspection report completed at the time of the move out inspection on December 29, 2016. The Tenant did not agree with the contents of the report and did not sign it.

In response, the Tenant submitted that the rental unit was left clean. The Tenant pointed out that the Landlord's evidence is not reliable. The Tenant pointed out that the Landlord is claiming that the rental unit was cleaned on December 28, 2016; however, the condition inspection report completed a day later on December 29, 2016, indicates that the areas that were apparently cleaned by the Landlord are dirty.

#### Security Deposit

The Landlord applied on January 6, 2017, to retain the security deposit in partial satisfaction of his claim.

#### Tenants Application

#### Security Deposit

The Tenant testified that the Landlord was provided with the Tenants forwarding address in writing on December 29, 2016, for the return of the security deposit.

The Tenant testified that at the move in inspection, the Landlord, or an agent was not present to complete the inspection.

The Tenant raised a concern that the amount being claimed by the Landlord is contradictory. The Tenant submitted that the Landlord initially requested \$100.00, the condition inspection report indicates \$180.00, and the claim is now \$195.00.

The Tenant testified that permission was not given to the Landlord to withhold any amount of the security deposit.

The Tenant is seeking the return of the security deposit.

In response, the Landlord submitted that he was willing to settle for less money rather than proceed to a hearing. The Landlord submitted that the amounts were initially estimates.

### Analysis

The Residential Tenancy Branch Policy Guideline #3 Claims For Rent and Damages for Loss of Rent states:

*The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.*

*In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.*

Section 21 of the Residential Tenancy Regulation states:

*in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.*

Section 23 of the Act states:

*the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

#### January 2017 Rent

I make no finding on whether the tenancy was a month to month tenancy or a fixed term lease. In either case, unless the agreement states the Tenant must move out at the end of the fixed date, the Tenant is required to give proper written notice to end a tenancy.

The Landlord testified that he was able to rent the unit out for the month of January 2017. I find that the Landlord did not suffer a loss of rental income.

The Landlord can not profit by seeking double the rent for January 2017. I dismiss the Landlord's claim for \$1,100.00 for January 2017, rent.

#### Carpet Cleaning

I find that the Landlord breached section 23 of the Act by not being present at the start of the tenancy to complete the condition inspection report with the Tenant.

The parties provided opposing testimony on the cleanliness of the carpet. When two parties provide equally believable testimony the burden of proof rests with the applicant.

The Landlord did not provide any supporting evidence that the carpet was left dirty. 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. In this case the tenancy was for 9 months.

The Landlord provided insufficient evidence to support his claim that the Tenant is responsible for the cost of the carpet cleaning. The Landlord's claim for the cost of carpet cleaning is dismissed.

#### Cleaning

The Landlord's claim for cleaning costs is dismissed. The Tenant did not agree with the condition inspection report at the end of the tenancy. The Landlord submitted the unit was cleaned on December 28, 2016; however the condition inspection report completed a day later indicates some of the areas that were cleaned are still dirty. I find that the

condition inspection report is not reliable evidence regarding the condition of the rental unit at the end of the tenancy. The Landlord's photographic evidence is black and white photocopies. I find that the photographs do not show that the rental unit was dirty.

The Landlord provided insufficient evidence that the rental unit was dirty and that the Tenant is responsible for the cost to clean the rental unit.

### Security Deposit

The Landlord failed to conduct a move in inspection with the Tenant and has therefore extinguished his right to claim against the security deposit for damage.

The Landlord applied for dispute resolution on January 6, 2017, which was within 15 days of the Tenant moving out and providing a written forwarding address. As such, the doubling of the security deposit provision of section 38 of the Act does not apply.

I find that the Tenant is entitled to the return of the security deposit in the amount of \$550.00.

### Monetary Awards

The Tenant is awarded \$550.00 for the security deposit.

The Landlord was not successful proving that the Tenant is responsible for the costs to clean the rental unit and did not suffer a loss of rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful, and the Landlord was not, I order the Landlord to pay the Tenant for the cost of the filing fee for this hearing.

I order the Landlord to return the security deposit in the amount of \$550.00 to the Tenant. I grant the Tenant a monetary order in the amount of \$650.00 for the security deposit and filing fee. This order must be served on the Landlord and may be enforced in Provincial Court.

### Conclusion

The Landlord extinguished his right to apply for the security deposit by failing to perform a move in inspection.

The Landlord was not successful proving that the Tenant is responsible for the costs to clean the rental unit, and the Landlord did not suffer a loss of rent.

I find that the Landlord owes the Tenant \$550.00 for the security deposit.

The Tenant is granted a monetary order in the amount of \$650.00.

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: July 10, 2017

---

Residential Tenancy Branch