



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNDC MNSD FF

### Introduction

This hearing was convened in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- a monetary order for compensation for unpaid rent, loss and damage pursuant to section 67;
- authorization to retain of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The parties acknowledged service of the application and respective evidence packages.

### Issues

Is the landlord entitled to a monetary award for compensation for unpaid rent, loss and damage to the rental unit?

Is the landlord entitled to retain all or a portion of the security deposit pursuant to section 38?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background

This one-year fixed term tenancy began on November 1, 2015 with a monthly rent of \$1075.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$537.50 and a pet deposit of \$268.75 at the start of the tenancy which the landlord continues to retain. The tenancy ended on April 02, 2016 before the end of the fixed term.

A move-in condition inspection was conducted on November 4, 2015. The landlord conducted a move-out condition inspection in the absence of the tenant on April 2, 2016. The landlord testified she asked the tenant twice to be available for a move-out inspection but the tenant denied the requests. The tenant had vacated the rental unit at the time of the inspection. The tenant testified that she tried to reschedule the move-out inspection to another time but the landlord told her it was too late. The tenant testified that she had to work at the time of the first scheduled inspection. The tenant submitted copies of text messages sent to the landlord on April 2, 2017 in support of her attempt to reschedule. The tenant also provided a forwarding address to the landlord by text message on this same date. The tenant did not provide the landlord with a forwarding address in writing. In a previous hearing on January 23, 2017, an Arbitrator confirmed the landlord had received the forwarding address as of the hearing date. The landlord filed this application within 15 days of this hearing date.

### Evidence & Analysis

Based on the testimony and the documentary evidence provided by the parties, my findings in relation to the various aspects of the landlords' application as set out on the Monetary Order Worksheet are as follows:

#### *#1 and #2: Restoration receipt & receipt for cleaning*

The landlord testified that the tenant did not clean the rental unit upon move out. The landlord submitted an invoice in the amount of \$565.95 dated April 7, 2016 detailing the cleaning work completed. The invoice includes removing and replacing a moldy carpet from a closet; a high pressure rinse & extract on a bathroom tile floor, and cleaning a disinfecting urinated wall and tile/grout, plus carpet cleaning. The landlord also submitted a receipt in the amount of \$240.00 dated April 3, 2016 for cleaning the entire basement suite including the windows, stove, fridge and washroom.

The tenant testified that the carpets were moldy at the start of the tenancy. The tenant submitted pictures of the carpet at the beginning of the tenancy and text messages from the landlord stating she was planning on replacing the carpets. The tenant also submitted an invoice dated April 1, 2016 for cleaning services she alleges she hired upon move-out. The tenant also submitted pictures taken on move-out but they only included a picture of the kitchen and a hallway.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Section 37 of the Act requires 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.

I accept the tenant's testimony and documentary evidence and find the carpets needed to be replaced at the start of the tenancy. Therefore, I dismiss the portion of the restoration expense relating to replacing and cleaning the carpets. However, I do accept the landlord's testimony and documentary evidence, specifically the restoration invoice relating to the cleaning & disinfecting of urinated walls. I find the landlord is entitled to an award of **\$63.00** which is the cleaning portion of the restoration receipt plus applicable GST.

Both parties submitted receipts for cleaning work allegedly completed at the end of the tenancy. Neither party provided any meaningful pictures to support the condition of the rental unit at the end of the tenancy. The pictures submitted by the landlord were small and black & white and were more in relation to the restoration work claimed above. The tenant only provided two pictures from which it is not possible to determine the full extent of the cleaning work done or required. The onus is on the landlord to provide evidence in support of the claim. I find the landlord has provided insufficient evidence in support of the claim for these additional cleaning expenses. I also note that I have not relied on the move-out condition inspection report provided by the landlord as the landlord failed to provide the tenant with a second opportunity for inspection in the approved form as required by section 17 of the Regulation. The landlord's claim for cleaning expenses is dismissed.

### *#3: April 1-15 unpaid rent*

The landlord is claiming unpaid rent for this period as the tenant vacated the rental unit in breach of the fixed term agreement. The landlord testified that she was able to mitigate her losses and re-rent the unit for April 15, 2016.

The tenant testified that on February 28, 2016 the landlord reminder her that rent was due and the next day evicted her by text message and threatened to change the locks to the rental unit. The tenant provided copies of the text messages in support.

There is no dispute the tenancy was for a one year fixed term which did not expire until October 31, 2016.

Pursuant to section 44 of the Act, a tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [*tenant's notice*];
- (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
- (ii) section 46 [*landlord's notice: non-payment of rent*];
- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

As the fixed term had not expired nor did the landlord issue the tenant a notice in accordance with any of the above provisions, I dismiss the tenant's argument that the landlord was the one that ended the tenancy by evicting her through text message.

As the tenant ended the tenancy by vacating the rental unit, I accept the landlord's claim for loss of rent for the period of April 1-15, 2016. The landlord is awarded **\$537.50** which is one half the monthly rent.

#4 & #5: Estimate for paint and estimate for labour for paint

The landlord testified the tenant painted two rooms which the landlord permitted as long as the tenant agreed to paint them back at the end of the tenancy. The landlord testified the tenant did not paint the rooms back at the end of the tenancy. The landlord submitted estimates for the paint and labour required. The landlord testified the current tenants said the paint colors were fine so she has not yet painted the rooms back to the original colors but claims she may have to for the next tenants.

The tenant submitted an invoice dated March 31, 2016 from a painting company and testified that she hired the company to paint the rooms back at the end of the tenancy. The tenant testified that she supplied the paint.

I find the landlord did not provided sufficient evidence in support of her claim that the tenant did not paint the rooms back at the end of the tenancy. The landlord could have provided some pictures in support of her claim but did not do so. Further, as the landlord did not actually paint the rooms back, I find the landlord did not suffer a loss as claimed. This part of the landlord's claim is dismissed.

#6: CRD Water – running toilet

The landlord withdrew this portion of the claim in the hearing.

#7: Shower head

The landlord testified the tenant removed a shower head that was put in by a previous tenant. The landlord submitted a picture of the shower head.

The tenant testified that she had bought the new showerhead as the old one was leaking. She replaced the old leaking showerhead at the end of the tenancy.

I find the landlord has not provided sufficient evidence that the shower head in question was there at the beginning of the tenancy. This part of the landlord's application is dismissed.

As the landlord was only partly successful in this application, I find that the landlord is entitled to recover **\$50.00** of the \$100.00 filing fee paid for this application for a total monetary award of **\$650.50**.

The landlord continues to hold a security deposit and pet deposit of \$806.25. I allow the landlord to retain the security deposit in full satisfaction of the monetary award pursuant

to section 38 of the Act. The balance of the security and pet deposit in the amount of \$155.75 is to be returned to the tenant.

Therefore, I find that the tenant is entitled to a Monetary Order in the amount of **\$155.75.**

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of **\$155.75.** Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: July 13, 2017

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Residential Tenancy Branch