



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MND, MNSD, FF

### Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant made an application for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The co-landlord ES (the "landlord") confirmed she represented both landlords.

As both parties were in attendance I confirmed that there were no issues with service. The landlord confirmed receipt of the tenant's application and evidence package, and the tenant confirmed receipt of the landlords' application and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the respective applications and their evidence.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord testified that since they filed their application, they have obtained invoices to more accurately calculate their loss. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as it is reasonably foreseeable that the total figure claimed would change when invoices for services are obtained,

I amend the landlords' Application to increase the landlords' monetary claim from \$637.80 to \$645.25.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for damage and loss arising out of this tenancy?

Are the landlords entitled to retain all or a portion of the tenant's security deposit?

Is the tenant entitled to a monetary award of double the value of the security deposit as claimed?

Is either party entitled to recover the filing fee for their application from the other?

Background and Evidence

The parties agreed on the following facts. This tenancy began when the landlords purchased the property from the previous landlord in January, 2005. The tenant has been residing in the rental unit since December, 2004. The tenancy ended on March 31, 2017. A security deposit of \$400.00 and pet damage deposit of \$400.00 were paid to the previous landlord when the tenant moved into the rental unit and was transferred to the landlords when they took over the tenancy. The full pet damage deposit has been returned to the tenant. The tenant calculates the amount of the security deposit inclusive of interest is \$414.16 as at the date of the hearing.

No condition inspection report was prepared at the end of the tenancy. The parties testified that they had originally agreed to an inspection of the rental unit at 7:00pm on April 18, 2017. The tenant subsequently texted the landlord saying she was unavailable at that time. The landlord provided the tenant with additional times for an inspection but the tenant said she was unavailable at any of the times proposed by the landlord.

The landlord claims the amount of \$645.25 for the following items:

Item	Amount
Cleaning (8 hrs @ \$35.00/hr)	\$280.00
Dumping Fee	\$75.00
Transportation and Time for Dumping	\$90.00
Replacement Blinds	\$42.80
Carpet Cleaning	\$157.45
<b>TOTAL</b>	<b>\$645.25</b>

The landlord submitted into written evidence invoices for carpet cleaning and blind replacement as well as photographs of the rental unit showing its state after the tenant vacated.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur,

the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

Section 35 of the *Act* outlines the requirement for the landlord and tenant to inspect the condition of the rental unit at the end of the tenancy. The *Act* provides that the landlord must offer the tenant at least 2 opportunities for the inspection. Regulations 16 and 17 provide that the parties must attempt in good faith to agree on a date and time for a condition inspection. If the tenant is not available at a time proposed the landlord must propose a second opportunity to the tenant with a notice in the approved form. I accept the parties' evidence that an inspection was originally scheduled for April 18, 2017. I accept the evidence of the parties that the tenant requested another time as she was unavailable during the initially scheduled time. I accept the undisputed evidence that the landlord offered the tenant additional dates when the inspection could be performed and the tenant stated she could not do any of the dates offered.

While the additional opportunities proposed by the landlord were sent by text message and not in the approved form, pursuant to section 10(2) of the *Act* as I find that the deviation did not affect the substance and was not intended to mislead the tenant I find that the opportunities were sufficiently conveyed.

I accept the parties' evidence that a condition inspection was scheduled for April 18, 2017 and the tenant needed to reschedule. I find that the landlords complied with the requirements of 35(2) of the *Act* in providing the tenant with two opportunities to participate in a condition inspection. I accept the evidence that the tenant did not participate in the condition inspection. Consequently, pursuant to section 36(1) of the *Act* I find that the tenant has extinguished any right to claim against the security deposit by failing to participate in a condition inspection at the end of the tenancy. The tenant's application is dismissed.

Section 67 of the *Act* allows me to issue a monetary award for damage or loss. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Policy Guideline 40 provides a general guide for determining the useful life of building elements. The Guideline states that an arbitrator "may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement". In the present case, when considering the length of this tenancy I find that some of the building elements have exceeded the expected useful life. There was no evidence that the building elements were replaced throughout the tenancy. Because of this, I find that the tenant is only responsible for the damage or loss to the rental unit in excess of the expected wear and tear.

I accept the evidence of the landlord that there was some clutter and debris left in the rental unit after the tenant had moved out. I accept the landlord's testimony that the landlord spent approximately 8 hours cleaning. I accept the landlord's calculation that the cost of cleaning the rental unit is \$280.00.

I find there is insufficient evidence regarding the dumping of furniture to justify the full amount of the landlords' claim. The landlords did not submit into written evidence any receipts for the dumping fee. The landlord testified that the tenant left several large pieces of furniture in the rental unit and the landlord physically moved those items at their own expense. The tenant did not dispute the landlord's testimony that items of furniture were left in the rental unit. The tenant disputed that furniture was disposed and submitted into written evidence a photograph which she stated showed the furniture being stored on the rental property. While I find that the landlord has not shown on a balance of probabilities that the furniture left on the property by the tenant was dumped causing the landlord to incur losses, I do accept the landlord's testimony that the furniture was removed in order to clean the rental unit. I accept the landlord's evidence that the landlords moved the furniture within and out of the rental unit. The landlords submit the cost of transportation and labour to be \$90.00. I find that there is insufficient evidence that the furniture was dumped and the landlord incurred transportation and dumping costs, I do find that there was some labour involved in moving the furniture within the rental building. I find that a monetary award in the amount of \$35.00, the equivalent of the landlords' estimated hourly labour cost to be appropriate.

Policy Guideline 40 provides that the useful life of carpeting and blinds to both be 10 years. I find that there is insufficient evidence to show that the carpet cleaning was necessitated by the tenant's actions that went beyond the expected wear and tear. I find that the landlord has not shown that they have suffered a loss due to the tenant's actions. It is reasonable to expect that after a decade carpets will require cleaning. I find that this is a cost of operating a business as a landlord and not a loss that arises due to the tenant's actions. I dismiss this portion of the landlord's claim.

The landlord claims for the cost of replacing the blinds. While I accept the landlord's testimony that the blinds required replacement at the end of the tenancy, I find, based on the age of the items that the blinds would have required replacement in any event. I find that the landlord has not shown, on a balance of probabilities, that the replacement was necessitated by the tenant's actions. I dismiss this portion of the landlord's claim.

As the landlord's application was partially successful I allow the landlord to recover the \$100.00 filing fee for this application from the tenant.

I find that the value of the security deposit as at the date of the hearing is \$414.16. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The tenant's application is dismissed.

Pursuant to section 67 of the *Act*, I issue a monetary award in the landlords' favour for the amount of \$415.00 under the following terms, which includes cleaning costs, labour costs and the filing fee. I order that the landlords retain this amount from the security deposit in full satisfaction of their claim. As the remainder of the deposit is \$0.84, I decline to issue a monetary award for this minimal amount

Item	Amount
Cleaning (8 hrs @ \$35.00/hr)	\$280.00
Moving Furniture	\$35.00
Filing Fee	\$100.00
Less Security Deposit and Interest	-\$414.16
<b>TOTAL</b>	<b>\$0.84</b>

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: October 11, 2017

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Residential Tenancy Branch