



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MND, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witness gave evidence under oath.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The following are agreed facts: There is no written tenancy agreement. The tenancy started on August 1, 2016 and ended on October 31, 2016. Rent of \$850.00 was payable monthly. The security deposit was dealt with in a previous hearing and a monetary order, dated December 13, 2016, was issued for its return. The Tenant was not allowed to smoke in the unit but could smoke on the balcony and yard. No move-in condition inspection report was completed.

The Landlord states that the Tenant smoked in the unit during the tenancy and that each time the Landlord smelled smoke she would send the Tenant an email. The Landlord states that the Tenant only responded that she had burned toast. The Landlord states that the Tenant would smoke in the unit during the middle of the night and that a vent in the Tenant's unit would distribute the smoke throughout the house. The Landlord states that they would smell the

smoke when they got up in the morning. The Tenant states that she never smoked in the unit during the tenancy. The Tenant states that the Landlord provided the Tenant with a table and chair on the balcony for smoking and that this is where the Tenant would smoke.

The Landlord states that a move-out inspection was scheduled for 1:00 p.m. on October 31, 2017 but that the Tenant refused to attend. The Landlord states that although the Landlord inspected the unit at the end of the tenancy the Landlord did not complete a move-out condition inspection report. The Landlord states that late in the day on October 31, 2017 a 3<sup>rd</sup> party was in the unit and smelled smoke. The Landlord states that a few days after the end of the tenancy another 3<sup>rd</sup> party was in the unit and smelled smoke. The Landlord provides an affidavit from each of these persons. I note that one of these persons is a contractor who also provides an estimate for his services to repair the unit.

The Landlord claims costs to replace a mattress that was new at the outset of the tenancy, costs to clean and replace the carpet and underlay that were more than 10 years old, costs to remove the wallpaper and paint the walls, costs to remove and clean the window coverings, and costs to clean the ducts in order to remove the smell of smoke. The Landlord states that the wallpaper has been washed and that the ducts were never cleaned prior to the tenancy. The Landlord states that there were smoke stains on the walls but that no photos of the walls have been taken and provided as evidence. The Landlord has not made any of the repairs or replacements being claimed and the Landlord states that this was not done as it is too expensive. The Landlord states that the unit has not been rented since this tenancy.

The Tenant states the Landlord refused the Tenant's request for a move-out inspection and that when the Tenant returned the keys to Landlord ML on October 31, 2017 Landlord ML told the Tenant that the unit was all good and that the security deposit would be returned. The Witness states that he helped the Tenant move out of the unit and that there was no smell of smoke in the unit. The Witness states that he was with the Tenant when the keys were returned and confirms that the Landlord informed the Tenant that the unit was left in good condition. The Witness states that after the keys were returned they saw the Landlord and another person leave the house with the stove from the Tenant's unit and place it in a truck. The Witness states that he is an ex-smoker and that he believes that as a result of being an ex-smoke the Witness

smells smoke very easily. The Witness states that he did not see the Tenant smoke in the unit and did not see any signs of smoking such as ashtrays.

The Tenant states that the Landlord's used to be smokers, that they smoked in the house and that the Landlords recently quit smoking. The Tenant states that many years ago the Tenant and the Landlord smoked in the house. The Tenant states that the chair and mattress were old and outdated. The Tenant states that the unit has not been rented as it was shut down by the city. The Landlord states that no suites were shut down and that they only removed an oven from the lower suite. The Landlord states that the person who helped remove the stove was at the house to witness the move-out inspection.

#### Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

The Landlord's evidence package includes a reference to three emails to the Tenant about smoking dated October 3, 7 and 12, 2016 however the Landlord did not provide copies of these texts as evidence. I consider the Landlord's evidence of smoke stains and smoke damage on the walls to be unsupported by lack a move-out condition report and the lack of photos.

Although the Landlord provides an affidavit from a person about the smell of smoke in the unit I consider that this person also gives a quote to make repairs and stands to make a financial gain from the presence of the smoke smell. As such I do not consider this evidence to be reliable. I also consider that the second witness affidavit refers to the smell of smoke approximately a week after the end of the tenancy and gives no evidence of smoke in the unit during the tenancy. For these reasons I prefer the Tenant's evidence of not having smoked in the unit during the tenancy.

Given the short term of the tenancy even if the Tenant did on occasion smoke in the unit I find that the Landlord's evidence of smoke stains on the walls to be an exaggeration that is not

supported by photos. Finally, the Landlord has provided no evidence of any incurred costs. For these reasons I find that the Landlord has not substantiated that the Landlord incurred the damages or costs claimed and I dismiss its claims. As the Landlord has not been successful I dismiss the claim for the return of the filing fee and in effect the application is dismissed in its entirety.

Conclusion

The application is dismissed.

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: November 14, 2017

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Residential Tenancy Branch