



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Locke Property Management Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, 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 unpaid rent - 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 Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy stated on September 10, 2001 and ended on July 6, 2017. At the outset of the tenancy the Landlord collected \$230.00 as a security deposit and \$20.00 as a key deposit. The Parties mutually conducted a move-in inspection with competed condition report copied to the Tenant. On July 10, 2017 the Tenant returned the keys and the Parties mutually conducted a move-out inspection however no move-out report was provided to the Tenant. The Landlord did not return the key deposit. The Tenant

provided its forwarding address to the Landlord on May 31, 2017 with its notice to end the tenancy.

The Landlord provided a second monetary order worksheet with a reduced overall claim amount than that indicated in the original monetary order worksheet. The Landlord confirms that the amounts in the second monetary order worksheet are the costs being claimed.

The Landlord states that the Tenant failed to clean the carpet in the bedroom. The Landlord states that the other carpets in the unit were replaced. The Landlord states that the carpet in the bedroom was about 15 years old. The Landlord claims the cost of \$157.50 for cleaning that carpet and provides a receipt for this cost. The Tenant states that he did not clean the carpets because they were over 20 years old and should have been replaced.

The Landlord submits that the Tenant ended the tenancy for June 30, 2017 but remained in the unit until July 6, 2017. The Landlord states that the delay of the Tenant in moving out of the unit cost the Landlord time in making repairs. The Landlord states that the next tenancy started at the end of July 2017. The Landlord claims \$144.00 calculated as a per diem rate of the total rent for the month. The Tenant states that he did not think the Landlord cared if the Tenant moved out a week late as the Landlord had allowed the Tenant to move in a week early. The Tenant's advocate calculates that the per diem rate for the rent is only \$23.58 per day.

The Landlord states that the Tenant left furnishings and household articles in the garage. The Landlord states that they incurred the costs of \$128.76 to remove the articles. The Landlord claims this amount and provides an invoice. The Tenant states that everybody including the Landlord leaves articles in the garage for give-away and that half of the articles left in that area, including lumber and a treadmill, did not belong to the Tenant. The Landlord states that all the articles in the garage were removed and

that the Landlord did not know whose other belongings were there. The Landlord provided no photos of the articles removed from the garage.

The Landlord states that the Tenant left items in the unit that had to be removed by the Landlord at a cost of \$52.50 for two hours labour. The Tenant states that it should only have taken an hour to remove those items left by the Tenant.

The Landlord states that the Tenant did not leave the unit clean and that the cleaning undertaken by the Landlord included washing of the walls. The Landlord states that as a matter of routine walls are washed before painting and that the Landlord considers it a routine requirement of a tenant to wash walls at the end of a tenancy. The Landlord claims \$263.81. The Tenant states that it did not clean the unit and that the photo the Landlord took of the cupboard under the sink shows stains left by repairs.

### Analysis

Section 44 of the Act sets out how tenancies may end. Policy Guideline #3 provides that a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provisions, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises. Based on the undisputed evidence that the Tenant remained in the unit for a further 6 days after the tenancy was to end and calculating the per diem rental rate at \$23.58 ( $731.00/31 \times 6$ ), I find that the Landlord has substantiated its claim for **\$141.48** ( $6 \times 23.58$ ) in rent.

Section 37 of the Act provides 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. 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. Policy Guideline #40 provides that the useful life of carpet is 10 years and the useful life of interior paint is 4 years. As the Landlord's evidence

that most of the carpets were replaced, considering the Tenant's evidence that the carpets were likely 20 years old and given the Landlord's unsupported evidence of the age of the remaining carpet I find on a balance of probabilities that the remaining carpet was as old as the replaced carpets. As there is no useful life, and therefore value, left to the bedroom carpet I find that the Landlord has not substantiated that the Tenant's failure to clean the carpet caused any loss of value. I therefore dismiss the claim for carpet cleaning.

As the walls have paint on them that is well past its useful life and as there is no supporting evidence that the walls were dirty beyond reasonable wear and tear on aged paint, I consider that the Tenant was not required to wash the walls at the end of the tenancy to achieve reasonable cleanliness. Given the Tenant's evidence that he otherwise did not clean the unit and as the cleaning invoice does not set out the time spent on the wall washing in order to determine the precise costs for the remaining cleaning that the Tenant is responsible for I find that the Landlord is only entitled to a nominal sum of **\$50.00**.

The Tenant's evidence of a give-away area in the garage that was used by other persons was not disputed by the Landlord and I found this evidence to hold a ring of truth. Even if the area was used by several persons as a give-away area I would consider that if after a brief period of time the give-away items were not taken then the person who left them there would be responsible for its removal however there is no evidence on this point. I accept that in removing all the articles the Landlord also removed other persons' articles however the Landlord provided no photos of the removed articles to determine which articles that the Tenant would have been responsible for. For these reasons I find that the Landlord has not substantiated the costs claimed and I dismiss the claim.

Given the photos of the articles left in the unit I accept the Tenant's evidence that it should not have taken more than an hour to remove and dispose the articles. I find

therefore that the Landlord has not substantiated the costs claimed. However given the Tenant's failure to have removed these items at the end of the tenancy, I find that the Landlord is entitled to a nominal sum of **\$25.00** for the breach.

As the Landlord's application has met with minimal success I find that the Landlord is only entitled to half the filing fee in the amount of **\$50.00** for a total entitlement of **\$266.48**. Deducting the combined key and security deposit of **\$250.00** plus interest of **\$11.26** leaves **\$5.22** owed by the Tenant to the Landlord.

### Conclusion

I Order the Landlord to retain the key and security deposit plus interest of \$261.26 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$5.22**. If necessary, this order may be filed in the Small Claims 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: January 12, 2018

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Residential Tenancy Branch