



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking compensation in the amount of \$843.59 for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, recovery of the \$100.00 filing fee, and authorization to withhold the security deposit against the above noted amounts.

The hearing was convened by telephone conference call and was attended by the Tenant and two agents for the Landlord (the “Agents”), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

### Issue(s) to be Decided

Is the Landlord entitled to compensation for damage or loss under the Act, regulation, or tenancy agreement and recovery of the \$100.00 filing fee?

Is the Landlord entitled to withhold the security deposit paid by the Tenant against any money owed?

### Background and Evidence

The six month fixed-term tenancy agreement in the documentary evidence before me states that the tenancy began on December 6, 2015, at a monthly rent amount of \$1,500.00, which was due on the first day of each month. It also states that the Tenant paid a \$750.00 security deposit and a \$200.00 pet damage deposit. Although the parties agreed that Tenant was sent a partial refund of the security deposit by e-mail transfer in the amount of \$106.41 in October of 2017, both parties agreed that it was ultimately not accepted by the Tenant.

Both parties agreed that the tenancy ended on October 1, 2017, that a move-in and move-out condition inspection was completed, and that the Tenant provided her forwarding address to the Landlord in writing on October 1, 2017. The Agents testified that the 600 square foot apartment was not cleaned prior to move out and sought \$426.30 in moving costs. The Agents stated that it took 14 hours over two days to clean the apartment and submitted a receipt for the work from the cleaning company.

While the Tenant acknowledged that some areas of the rental unit required further cleaning, the Tenant denied that she owes \$426.30 in cleaning costs as she stated that the agreement at the end of the tenancy was for her to pay \$300.00 for cleaning. In support of this testimony the Tenant pointed to the move-out condition inspection report in the documentary evidence before me which shows many areas in need of cleaning and states that the parties agreed that \$300.00 will be deducted from the security deposit for this reason. Although the Agents agreed that cleaning costs of \$300.00 were discussed, they stated that this amount was simply an estimate and not the agreed upon cost. The Tenant disputed the Agents' testimony stating that there was final agreement that she would pay only \$300.00 to clean the rental unit.

Both parties agreed that the Tenant was provided with a heater during the tenancy and the Tenant acknowledged that she accidentally took it with her when she moved. The parties agreed that the cost of the heater was \$78.39 and the Tenant agreed that she owes this amount to the Landlord.

Although both parties agreed that all sinks were checked by running the water during the move-out inspection on October 1, 2017, the Landlord sought \$126.00 for the cost of drain cleaning. In the hearing the Agents stated that after the Tenant moved-out of the rental unit, the cleaners discovered that the drain of the Kitchen sink was clogged when they were pouring dirty water into the sink. In support of this testimony the Agents provided a photograph of standing water in the sink and a receipt for the cost of this

repair. The Tenant argued that she is not responsible for this cost as the drains were checked and properly functioning at the time of the move-out inspection. Further to this, the Tenant argued that it is likely that the cleaners clogged the drain by pouring dirty water into the sink.

The Landlord also sought \$212.90 for four days of lost rent as the new occupants were unable to move into the rental unit until it was cleaned. In support of this testimony the Agents provided an e-mail from the new occupants stating that they could not move into the rental unit until October 5, 2017, due to cleaning and painting. When asked why it took four days to have 600 square feet cleaned, the Agents stated that the cleaning company hired was not available on October 1, 2017, and was only available for three hours on October 2, 2017. The Agents stated that as the rental unit was dirtier than originally thought, three hours was not enough time to complete the cleaning and as a result, the company was required to return on October 4, 2017, their next available date.

The Tenant argued that 14 hours over four days is simply an unreasonable amount of time to clean 600 square feet and argued that she is not responsible for this loss in rent as the Landlord did not make a concerted effort to have it cleaned as soon as reasonably possible. The Agents initially acknowledged that more than one company was not contacted about cleaning the rental unit; however, when I asked why no attempts were made to find a cleaning company with better availability, they changed their testimony and stated that attempts to find another company were made without success.

### Analysis

Although the Agents argued that the Landlord is entitled to \$426.30 in cleaning costs and the \$126.00 for sink drain repairs, I do not agree. Residential Tenancy Regulation section 21 states that in a dispute resolution proceeding, a condition inspection report is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless the parties have a preponderance of evidence to the contrary. As the parties agreed that the taps were run during the move-out inspection, and the inspection report does not state that the drains were clogged at the end of the tenancy, I accept that the drains were not clogged at the time the tenancy ended. I also find the Tenant's argument that the sink was likely clogged by the cleaners after she moved out persuasive. As a result, I dismiss the Landlord's claim for the cost of sink repairs without leave to reapply.

Further to this, the condition inspection report in the documentary evidence before me states that \$300.00 was agreed to for cleaning costs and that this amount could be retained from the Tenant's security deposit. While I appreciate that the actual cost for cleaning the rental unit may not have been known at the time the tenancy ended, I find that it was open to the parties not to agree on a set amount for the cost of cleaning and for the Landlord to instead file a claim against the security deposit for the actual costs, once known. However, I do not find it reasonable for the Landlord, having agreed to a set amount of \$300.00 in writing, to then seek further costs for cleaning in the hearing. The pictures of the rental unit all show areas that should have been checked during a thorough move-out inspection and as a result, I do not find that the Landlord is entitled to seek additional cleaning costs above what was already agreed to in writing because they or their representatives did not complete a thorough check of the rental unit at the time of the inspection. As a result, I find that the Landlord is only entitled to \$300.00 for the cost of cleaning. As the parties all agreed that the Tenant owes \$78.39 to the Landlord for a heater, I find that the Landlord is also entitled to \$78.39 for the replacement cost of the heater.

Although the Landlord also sought \$212.90 for four days of lost rent in October 2017, I find that the receipt submitted for the cleaning costs by the Landlord and the testimony provided in the hearing contradict one another. In the hearing the Agents stated that the cleaning occurred on October 2<sup>nd</sup> and 4<sup>th</sup>, 2017; however, the receipt from the cleaning company actually states that three hours of cleaning was completed on September 30, 2017, and 11 hours of cleaning was completed on October 1, 2017. Further to this, I note that the e-mail submitted from the new occupants states that they could not move into the rental unit due to both cleaning and painting of the rental unit. Based on the contradictory evidence and testimony before me regarding how long it took to clean the rental unit and over which dates, I find that Landlord has not satisfied me, on a balance of probabilities, that the rental unit was not cleaned until October 4, 2017. Further to this, as the e-mail from the new occupants mentioned painting of the rental unit, and no evidence or testimony was before me for consideration from the Landlord or Agents regarding the reason for or the timing of this painting, I am not satisfied that any delay in the start of the new tenancy was the direct result of the Tenant's actions or inactions. As a result, I dismiss the Landlord's claim for \$212.90 in lost rent without leave to reapply.

As the Landlord was only partially successful in their Application, I find that they are only entitled to recovery of half of the filing fee in the amount of \$50.00.

Based on the above, the Landlord is therefore entitled to compensation in the amount of \$428.39. Although the parties agree that no amount of the security deposit was actually returned to and received by the Tenant, both parties agreed that the Tenant provided her forwarding address in writing on October 1, 2017. As the Landlord's Application seeking retention of the Tenant's security deposit was filed within 15 days after the date the forwarding address was received pursuant to section 38(1) of the *Act*, I find that section 38(6) of the *Act* does not apply.

Based on my findings above, the Landlord is entitled to retain from the Tenant's security deposit, \$428.39. Pursuant to section 67 of the *Act* and Policy Guideline #29, the Tenant is therefore entitled to a Monetary Order in the amount of \$321.61, for the return of the balance of the security deposit.

### Conclusion

I order that the Landlord is entitled to compensation in the amount of \$428.39, which they are authorized to retain from the Tenant's \$750.00 security and pet damage deposits.

I order that the Tenant is entitled to the return of the remaining balance of the security deposit, which is \$321.61. Pursuant to section 67 of the *Act*, I therefore grant the Tenant a Monetary Order in the amount of \$321.61. The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. 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: June 22, 2018

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Residential Tenancy Branch