



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CLANCY CHISHOLM
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNSD (TENANT); FFL MNDL-S MNRL-S (LANDLORD)**

Introduction

This hearing dealt with an application by the tenant for a monetary order under the *Residential Tenancy Act* (the *Act*) for the following:

- A return of the security deposit pursuant to section 38.

This hearing also dealt with an application by the landlord for the following:

- A monetary order as compensation for damages and outstanding rent pursuant to section 67;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72;
- Reimbursement of the filing fee pursuant to section 72.

The landlord attended the hearing with his son and representative MC ("the landlord"). The tenant MP attended on behalf of both tenants ("the tenant"). Both parties were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions. The landlord called MC to provide affirmed testimony.

Each party acknowledged receipt of the Notice of Hearing and all evidentiary materials from the other. No issues of service were raised. I find each party was served pursuant to section 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to:

- A monetary award equivalent to double the value of the security deposit because of the landlord's failure to comply with the provisions of section 38 of the Act.

Is the landlord entitled to:

- A monetary order for outstanding rent or damages under section 67;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the Act; and
- Reimbursement of the filing fee under section 72.

Background and Evidence

The parties agreed as follows:

- They entered into month-to-month tenancy agreement beginning August 1, 2014 for rent of \$1,500.00 a month payable on the first of the month;
- At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$750.00;
- At the beginning of the tenancy, the parties signed a condition inspection report dated July 31, 2014 indicating the premises were in good condition;
- At the end of the tenancy, the parties signed a condition inspection report dated January 1, 2018 indicating the premises were in good condition;
- The landlord holds the security deposit and the tenant has not provided written authorization to the landlord to apply the deposit to rent or damages;
- The tenant moved out of the unit of January 1, 2018;
- The tenant provided her forwarding address in writing to the landlord on January 22, 2018;
- The tenant paid rent for the month of December 2016; no arrears are owing.

The parties submitted many documents including copies of the tenancy agreement, the letter of January 22, 2018, and the condition inspection report on moving in and moving out.

The parties testified that the landlord's unit was next to the tenant's unit. The tenant testified that on December 3, 2017, she put a written letter to the landlord in his mail slot

stating that she was moving out on January 1, 2018. The tenant did not provide a copy of this letter and the landlord denied receiving the letter.

The landlord testified he learned on January 1, 2018 that the tenant was in the process of moving out that day. The landlord stated this was the first he heard the tenant was planning to vacate.

The landlord claims compensation for rent for the month of January 2018.

The parties signed a condition inspection report on moving out on January 1, 2018 which indicated the unit was in satisfactory condition. The landlord's son and representative MC conducted the inspection on moving out. The landlord called MC as a witness.

The condition inspection report on moving out does not note any issues with the cleanliness of the unit including the carpets. The carpet cleaning statement box is checked indicating the tenant did not provide a receipt showing the carpets were cleaned.

The tenant testified she asked MC during the inspection if MC wanted her to clean the carpets. She stated MC replied negatively and said that his father would clean the carpet himself when he returned to the country in mid-January 2018.

The tenant testified that she left the unit in good order. She also testified she did not keep any animals in the unit during the tenancy.

MC denies agreeing the tenant did not have to clean the carpets or that his father would attend to the carpet cleaning. However, MC acknowledges that the condition inspection report is silent about the need for carpet cleaning.

The landlord stated he returned to the country in mid-January and went in to the unit for the first time since the tenant vacated. He observed a strong smell of animal urine. The landlord testified he attempted to clean the carpet himself. Following this, he stated the odour was still overpowering making it impossible to rent the unit. The landlord testified he hired a professional carpet cleaning company on January 30, 2018 at a cost of \$110.25. The landlord submitted a copy of the invoice. However, the landlord said the odour remained.

Accordingly, the landlord testified he had to replace the carpet on March 14, 2018 at a cost of \$900.00. He was unable to rent the unit until April 1, 2018. The landlord submitted a copy of the invoice.

The landlord claimed compensation in his Application for rent for both the months of January and February 2018. However, at the hearing, the landlord withdrew his claim for rent for February 2018.

The landlord testified at the hearing that he claimed the following:

ITEM	AMOUNT
Rent for January 2018	\$1,500.00
Carpet cleaning	\$110.25
Carpet replacement	\$900.00
TOTAL	\$2,510.25

The tenant applied for dispute resolution on April 25, 2018 asking for return of the security deposit.

The landlord applied for dispute resolution on May 11, 2018 asking for compensation for rent and cleaning/replacement of the carpet.

Analysis

I have reviewed all evidence and testimony before me and will refer only the relevant facts and issues meeting the requirements of the rules of procedure.

I will address each party's claims in turn.

Tenant

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act*, the landlord must 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 and receipt of the tenant's forwarding address in writing.

Section 38 states as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,
the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit under section 38.

Section 38(6) states as follows:

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find the landlord has not brought proceedings for compensation or an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I find the tenant provided the tenant's forwarding address in writing pursuant to section 38(1)(b) and did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

The award to the tenant is summarized as follows:

ITEM	AMOUNT
Security Deposit	\$750.00
Double the Security Deposit	\$750.00

Monetary Award Tenant	\$1,500.00
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Landlord

As stated above, a condition inspection was conducted by the parties at the time of moving in and moving out on January 1, 2018. A copy of the condition inspection report was submitted as evidence.

The condition inspection report does not note any problems with the unit.

Section 21 of the *Residential Tenancy Regulation* provides that in dispute resolution proceedings, a condition inspection report completed in accordance with the regulations is the best evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find the condition inspection report was completed in accordance with the *Act* and Regulations. I find the landlord has not established a preponderance of evidence showing that the condition inspection report is not the best and more reliable evidence of the condition of the unit.

I therefore dismiss the landlord's claim with respect to cleaning/replacement of the carpet without leave to reapply.

I now consider the landlord's claim for loss of rent for the month of January 2018.

Pursuant to section 45 of the *Act*, the tenant was required to provide one month's notice to the landlord of her intention to vacate. To vacate on December 31, 2018, the tenant was required to provide notice on November 31, 2018. As the tenant failed to provide notice and did not vacate the unit as required, the tenant is responsible for rent for the month of January 2018 in the amount of \$1,500.00.

During the hearing, the tenant acknowledged she did not provide adequate notice to the landlord of her intention to vacate the unit. The tenant agreed that the security deposit could be applied to any monetary order for outstanding rent.

I therefore award the landlord reimbursement for rent for the month of January 2018 in the amount of \$1,500.00.

The landlord is entitled to offset the security deposit owing the tenant against the landlord's monetary award pursuant to section 72.

A summary of my award is as follows:

ITEM	AMOUNT
Award to the tenant – doubling of the security deposit	\$1,500.00
(Less award to the landlord – rent for January 2018)	(\$1,500.00)
Monetary Award to Landlord and Tenant	\$0.00

I do not award the landlord any reimbursement for the filing fee.

Conclusion

I award neither party a monetary order pursuant to the offsetting provisions of section 72.

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 01, 2018

Residential Tenancy Branch