



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAMIDA HOLDINGS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On August 30, 2018, the Tenants applied for the return of the security deposit and pet damage deposit.

On October 2, 2018, the Landlord applied for a monetary order for unpaid rent and damage caused by the tenant and to keep the security deposit and pet damage deposit in full or partial satisfaction of the claims.

The matter was set for a conference call hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to compensation for unpaid rent?
- Is the Landlord entitled to compensation for damage caused by the Tenants?
- Is the Landlord entitled to retain the security deposit or pet damage deposit?

### Background and Evidence

The Tenants and Landlord testified that the tenancy began on August 3, 2017, as a fixed term tenancy to continue until August 31, 2018. Rent in the amount of \$2,150.00 was due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,075.00 and pet damage deposit of \$750.00.

The Tenants and Landlord testified that the tenancy ended on July 31, 2018.

### Tenants' Application *Security Deposit and Pet Damage Deposit*

The Tenants are seeking the return of double the amount of the security deposit and pet damage deposit in the amount of \$3,600.00. The Tenants paid the Landlord \$1,075.00 for a security deposit and \$750.00 for a pet damage deposit.

The Tenants testified that they provided their forwarding address in writing to the Landlord on July 31, 2018.

The Tenants testified that there was no agreement reached that permitted the Landlord to keep any amount of the deposits. The Tenants testified that they have not received any amount of the deposits from the Landlord.

The Landlord applied for dispute resolution and claimed against the security deposit and pet damage deposit on October 2, 2018. The Landlord testified that on August 1, 2018, they informed the Tenants that they were keeping the deposits.

The condition inspection report provided by the Landlord indicates that the move out inspection took place on July 31, 2018, and contains the signature of the Tenant and the Tenant's forwarding address.

### Landlord's Application

The Landlord's is seeking compensation for a loss of rent; cleaning costs; and repair costs. The Landlord is requesting compensation as follows, and is asking to retain the security deposit and pet damage deposit in partial satisfaction of his claim.

August 2018 Rent	\$2,150.00
Cleaning Costs	\$400.00
Repair Costs	\$5,145.00
Painting	
Carpet replacement	
Bathroom repairs	
total	\$7,695.00

August 2018, Rent

The Landlord testified that at the end of June 2018, the Landlord permitted the Tenants to give notice to end the lease early. The Tenants moved out of the rental unit on July 31, 2018.

The Landlord testified that on July 13, 2018, they found the rental unit to be filthy. The Landlord testified that in early July 2018, they listed the unit for rent on a local website. The Landlord testified that following attempted showings, they cancelled future showings of the unit. The Landlord testified that the listing of the unit was cancelled sometime around July 23, 2018. The Landlord testified that they notified the Tenants that the unit was too filthy to rent it out and asked them to clean the unit.

The Landlord testified that there were a lot of repairs required before the unit could be rented out. The Landlord testified that the carpets needed to be replaced before any new tenants could occupy the unit. The Landlord testified that it was not possible to replace the carpets before August 1, 2018.

In reply, the Tenants testified that the parties agreed that the tenancy could end early. The Tenants testified that in September 2018, the Landlord listed the rental unit for sale and the unit was sold on September 23, 2018.

The Tenants testified that the rental unit was not filthy and that they were not notified that the Landlord had an issue with the unit until July 17, 2018. The Tenants testified that they responded to the Landlord's letter on July 19, 2018 and July 24, 2018 and provided their phone number but never heard back from the Landlord.

In reply the Landlord testified that the sale of the rental unit is not relevant. He testified that when he realized that he was going to lose rent; he decided to sell the unit. The Landlord testified that in August he decided to not rent the unit out. The Landlord testified that the unit was listed on September 19, 2018.

The Landlord testified that he received the Tenants emails and he stated that they did not address his concerns.

Cleaning

The Landlord testified that after the tenants vacated the Landlord performed an inspection. The Landlord testified that the kitchen and bathroom required cleaning. The

Landlord testified that it took two people 5 hours to clean the rental unit. The Landlord is seeking \$400.00 for the effort to clean the unit. The Landlord provided a receipt.

In reply, the Tenants testified that they do not dispute the need for the unit to be cleaned. The Tenants testified that there was more cleaning that need to be done and that their cleaners cancelled on them.

The Tenants testified that the Landlords receipt for cleaning shows the name of a construction company; which is the same as the email address of the Landlords agent.

In reply, the Landlord testified that he has an association with the construction company and has access to the construction company's resources and he gets a better deal than others. When the Landlord was asked if he was the owner of the company he replied that he was a part owner of the company. He testified that he had a couple of labourers attend the unit and perform the cleaning.

### Repairs

The Landlord provided an invoice dated August 31, 2018, in the amount of \$5,518.00 for the cost to repaint the unit; replace flooring; and repair the bathroom.

### Painting \$2,750.00 +GST

The Landlord testified that the entire 1100 square foot rental unit was repainted. The Landlord testified that there were black marks and crayon marks on the walls that could not be cleaned off. The Landlord submitted that the marks were beyond normal wear and tear. The Landlord testified that the unit was last painted in 2016. The Landlord provided photographs of some walls.

The Landlord provided a copy of a condition inspection report ("the report") which provides information on the condition and state or repair of the unit at the start and end of the tenancy. The section of the report for the move in inspection is not completed properly. Condition codes to identify the condition of the rooms were not used. The report indicates the move out inspection took place on July 31, 2018. The report is signed by the Tenant; however, the section where the Tenants agree that the report fairly represents the condition of the rental unit is not complete.

In reply, the Tenants testified that they accept responsibility for a small gouge in a wall. The Tenants submitted that the unit only required touch up painting. The Tenants

submitted that the Landlord provided three photographs that show small sections of the walls. The Tenants testified that they did not damage the walls and that there were no crayon marks on the walls when they vacated the unit.

Flooring \$1,900.00 +GST

The Landlord testified that the carpets were removed and the hallway and bedrooms were replaced with laminate flooring. The Landlord provided three photographs of the carpet and submitted that the photographs show stains and snags. The Landlord testified that the carpets were 9 years old and were in good shape. The Landlord testified that he also installed laminate flooring in the Livingroom at the same time the flooring was replaced in the bedrooms. The Landlord submitted that the Tenants' are not responsible for the costs to replace the Livingroom flooring.

In reply the Tenants acknowledged that their two cats scratched a small area of carpeting. The Tenants submitted that the carpets were 10 years old. The Tenants testified that they had the carpets professionally cleaned at the end of the tenancy. The Tenants submitted that the Landlord replaced the carpets with laminate which is more expensive than carpeting.

The Landlord responded that the cost of new laminate is close to the cost of new carpet.

Bathroom \$250.00 +GST

The Landlord testified that repairs were required in the bathroom. The Landlord testified that the shower door came off its track due a broken castor. The Landlord testified that the majority of his claim was for an attempt to renew the grout. The Landlord testified that the grout was clean when the Tenants moved into the unit.

In reply, the Tenants testified that any damage in the bathroom is due to normal wear and tear. The Tenants' testified that they have no recollection of any issue with the grout. The Tenants testified that the Landlord has not provided any photographs of unclean grout in the bathroom. The Tenants testified that they used the shower door normally and a pin fell out.

In reply, the Landlord referred to a photograph he provided of the master bathroom. The Landlord submitted that the photograph shows the grout below the sink looks dirty.

### Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

### Tenants Claims

The Tenants are seeking the return of double the amount of their security deposit and pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

*The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.*

*If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.*

The tenancy ended on July 31, 2018. The Tenants provided their forwarding address to the Landlords on July 31, 2018. The Landlord applied for dispute resolution on October 2, 2018. I find that the Landlord failed to repay the security deposit and pet damage deposit to the Tenants, or make an application for dispute resolution against the deposits, within 15 days of the date the tenancy ended and when they received the Tenants' forwarding address.

Pursuant to section 38 (6) of the Act, the Landlord must pay the Tenants double the amount of the security deposit and pet damage deposit. I award the Tenants \$3,650.00 which is double the amount of the security deposit and pet damage deposit.

### Landlord's Claims

#### August 2018, Rent

The Residential Tenancy Policy Guideline #2 Duty to Minimize Loss provides information to Landlords and Tenants on the duty to mitigate.

*The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising*

*receipts to prove mitigation. If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved. The landlord or tenant entitled to contract for repairs as a result of a breach by the other party, may choose to pay a service charge that exceeds what one would reasonably be required to pay for the service in the circumstances. In that case, the arbitrator may award a reduced claim based on the reasonable cost of the service.*

I find that the parties agreed that the Tenants could end the fixed term tenancy agreement early. The Tenants are not responsible for the any loss of rent due to a breach of the tenancy agreement with respect to ending the tenancy early. With respect to whether or not the Landlord is entitled to a loss of rent due to the condition of the rental unit at the end of the tenancy, I find that the Landlord's claim fails for the following reasons.

The Landlord testified that he decided in August 2018, that he was not going to re-rent the unit. The Landlord has a duty to mitigate against loss and since the Landlord stopped trying to rent the unit, the Landlord is not entitled to compensation for a loss of rent.

In addition, I also considered that the Landlord was performing other repairs or renovation to the rental unit. I find that any delays in having the rental unit ready for a new Tenant in August 2018 were likely affected by the Landlords decision to have additional work completed in the unit.

Furthermore, I considered that the Landlord failed to respond to the Tenants' email responses regarding the Landlord's letter of concern about the condition of the rental unit. It is reasonable to accept that the Landlord would have responded to the Tenants emails dated July 19 and July 24<sup>th</sup> if the Landlord still had the intention at that time to rent the unit out for August 1, 2018.

The Landlord's claim for compensation for a loss of August 2018, rent is dismissed.

### Cleaning

I find that the rental unit required further cleaning after the Tenants moved out. Based on the Landlord's testimony that he is part owner of the company that provided the cleaners and gets a better deal than others, I find that the hourly rate of \$40.00 per hour for cleaning to be high. I find that the Landlord has not minimized the loss and I find that it is appropriate to reduce the amount of the Landlord's claim.

I find that it reasonable to award the Landlord costs for cleaning at an hourly rate of \$20.00 per hour. I award the Landlord \$200.00 for the cost of cleaning the rental unit at the end of the tenancy.

### Repairs

#### Painting

The Tenants submitted that the walls of the unit only required touch up and the Landlord is claiming the cost to repaint the interior of the entire rental unit. In considering whether or not the Landlord is entitled to his claim, I have considered the photographic evidence submitted and the condition inspection report.

The Landlord submitted photographs that were taken on July 13, 2018, prior to end the tenancy. A few photographs show marks on a wall; however, I find that the photographs are not evidence of the condition of the walls at the end of the tenancy because the Tenants testified there were no crayon marks on the walls at the end of the tenancy.

The Landlord provided photographs that they took on August 1, 2018. I find that the Landlords evidence shows gouge on a wall; some marks inside a closet, and discoloration on a bedroom wall.

I find that the inspection report was not completed properly at the start of the tenancy and end of the tenancy. In addition the report indicates there was no agreement on the condition of the unit at the end of the tenancy. I find that the condition inspection report is not reliable evidence of the condition and state of repair of the rental unit.

I find that the Landlord provided some photographic evidence that there was a wall gouge, marks on a closet wall, and discoloration on a bedroom wall. I find that the Tenants are responsible for these items. I find that the Landlords evidence is insufficient to support the claim for the entire cost of repainting the rental unit.

I find that it is not possible to determine the value of the Landlord's loss to repair or repaint the items I find the Tenants are responsible for. Therefore, I find that it is reasonable to award the Landlord a nominal amount of \$200.00 for these items.

#### Flooring



I find that the carpeting was between 9 and 10 years old. I find that the Tenants are responsible for damage to a small area of the carpets. Upon reviewing the Landlords photographs I find that aside from the areas of stains and snags, the carpet looks to be in good condition.

Residential Tenancy Policy Guideline #40 Useful Life of Building Elements is a general guide for determining the useful life of building elements for considering applications for damages. The Guideline provides 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. The guideline provides that the useful life of carpeting is 10 years.

After considering the evidence before me and after the considering the policy guideline, I find that the carpet was near the end of its useful life. The Landlord elected to replace the carpeting with laminate flooring. The carpets appear to be in good condition and there is insufficient evidence from the Landlord that the carpeting in the bedrooms and hallway needed to be replaced. I find that the Landlords decision to replace the flooring may have been influenced by his decision to sell the rental unit. The Landlord submitted that the cost to replace the flooring with laminate is close to the cost of replacement carpeting but he did not provide any evidence to support this submission.

I find that the Landlord has provided insufficient evidence that the Tenants' are responsible for the full replacement cost of the carpeting. Since the Tenants admitted responsibility for damage to a small area of carpeting, I award the Landlord a nominal award of \$50.00.

### Bathroom

I find that the Landlord's claim for compensation for repairs to the bathroom are not successful and are dismissed.

The Landlord is responsible to maintain the rental unit. There is insufficient evidence from the Landlord to prove that the Tenants use of the bathroom sink and shower door was negligent or that damage was caused intentionally. I find that fixtures often fail with normal use. I find that the Tenants' are not responsible for the costs to fix a sink fixture or a shower door castor.

With respect to the Landlord's claim for the cost to refresh the grout; I find that the Landlord provided insufficient evidence that the grout was dirty beyond normal use or

wear and tear. I find that the Landlord's photograph of the master bathroom is taken at a distance and does not prove his claim.

### Set Off of Claims

The Tenants are awarded a monetary claim in the amount of \$3,650.00 for double the security deposit and pet damage deposit.

The Landlord is awarded a total amount of \$450.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord and Tenants had some success in their applications, I decline to order either party to pay the other for the cost of the filing fee for this hearing.

After setting off the amounts of the awards, I grant the Tenants a monetary order in the amount of \$3,200.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlords.

### Conclusion

Both parties had some success with their monetary claims. After setting off the amounts owed by each party, I grant the Tenants a monetary order in the amount of \$3,200.00 on their claim for the return of double the security deposit. I order the Landlord to immediately return the amount of \$3,200.00 to the Tenants. For enforcement, this monetary order must be served on the Landlord and may be enforced in Provincial 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 16, 2019

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Residential Tenancy Branch