



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDCL MNSD FFL

### **Introduction:**

The landlord who is the applicant did not attend this hearing, although I left the teleconference hearing connection open until 1:53 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. on May 21, 2019. The tenant attended the hearing and gave sworn testimony. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the respondent tenant and I were the only ones who had called into this teleconference.

The tenant confirmed she received the Application for Dispute Resolution by registered mail. In response to my questions, she said the landlord was claiming her security deposit and the filing fee. I read evidence filed later by the landlord to the tenant where the landlord claimed \$1050 for cleaning and repair and painting and then changed her claim to \$2553.46 to include lost rent for one month. The landlord had not filed an Amendment to claim these revised amounts. The tenant said she received none of this evidence. She also confirmed she did not receive other evidence including letters from third parties which the landlord had submitted online as evidence. I find the tenant was served pursuant to section 89 of the *Residential Tenancy Act* (the Act) only with the Application of the landlord and with none of the evidence..

The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, and 67 for damages; and
- c) An order to recover the filing fee pursuant to Section 72.

### **Issue(s) to be Decided:**

Has the landlord proved on a balance of probabilities that the tenant damaged the property and that it was beyond reasonable wear and tear? What is the cost of the losses incurred by the landlord? Is the landlord entitled to recover the filing fee?

### **Background and Evidence:**

The applicant landlord did not attend the hearing although she served the Application/Notice of Hearing on the tenant. The tenant respondent attended and was given opportunity to be heard and to make submissions. She said the tenancy commenced October 2015, that monthly rent after increases was \$1169.50 and a security deposit of \$550 was paid. She said no condition inspection report was done at the beginning or end of the tenancy. She vacated on December 31, 2018 after giving notice and the landlord showed her suite to some prospective tenants in December 2018.

She denies that cleaning was necessary in the suite when she left. She provided a receipt for a well known carpet cleaning company dated December 29, 2018 and said she left the suite clean. She specifically denies that there was smoking inside the unit or a smoke smell inside the unit when she left. No odour of smoking was noted on her carpet cleaning bill. She said she did no damage to the ceiling. She believes the landlord is being vindictive for she (the tenant) was injured in the suite and has filed a claim against the landlord. She said the landlord threatened her and contacted her employer. She has provided a PO Box as her forwarding address for the return of her security deposit as she is afraid to give her physical address to the landlord.

### **Analysis**

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord did not attend the hearing to support her claim and she did not serve her evidence to the tenant. I find Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure* require evidence to be served on the respondent within 3 days of the hearing package being made available and according to Rule 3.14 it must be received by the respondent not less than 14 days before the hearing. As the landlord did not serve her evidence to the tenant, I decline to consider her documentary evidence. The tenant denies the landlord's claim and has produced a carpet cleaning receipt as evidence that she cleaned the unit before vacating. She denies she did any

damage to the unit. Therefore, I find insufficient evidence to support the landlord's claim and I dismiss the Application without leave to reapply.

The tenant has requested the return of her security deposit to the PO Box that she left as a forwarding address. I find she vacated on December 31, 2018 and provided this forwarding address to the landlord. The landlord filed her application on January 11, 2018 so I find the tenant is not entitled to the doubling provision provided in section 38 of the Act. Section 38 applies if the landlord has not returned the deposit or made an application to claim against it within 15 days of the later of the tenant vacating and providing her forwarding address in writing. I find *Residential Tenancy Policy Guideline 17* states:

*The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:*

- *A landlord's application to retain all or part of the security deposit; or*
- *a tenant's application for the return of the deposit.*

*Unless the tenant's right to the return of the deposit has been extinguished under the Act<sup>14</sup>. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.*

I find the tenant's right to the return of the deposit has not been extinguished. The landlord's application has been dismissed as there is insufficient evidence to support her claim. Therefore, I find the tenant entitled to the return of her security deposit.

**Conclusion:**

I dismiss the landlord's claim without leave to reapply. I find the tenant entitled to a monetary order for \$550 which is attached.

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: May 21, 2019

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Residential Tenancy Branch