



# 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 the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The landlord's agent and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the landlord served the tenant with the landlord's application for dispute resolution via registered mail. I find that the landlord's application was served in accordance with section 89 of the *Act*.

### Preliminary Issue- Amendment

In the hearing the landlord's agent sought to increase the landlord's monetary claim for physical damage to the subject rental property and to add a claim for loss of rental income.

Section 4.2 of the Rules states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I find that the tenant could not have reasonably anticipated the addition of a claim for loss of rental income or a higher claim for damages to the subject rental property. I therefore decline to amend the landlord's agent's application.

I informed both parties that they each have two years from the date the tenancy ends to file an application for dispute resolution regarding claims arising out of this tenancy.

### Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2017. The tenant testified that she was fully moved out on March 1, 2019. The landlord's agent testified that the tenant was fully moved out on March 2, 2019. Monthly rent in the amount of \$900.00 was payable on the first day of each month. A security deposit of \$450.00 was paid by the tenant to the landlord. At the end of the tenancy the landlord retained the tenant's security deposit. The landlord applied for dispute resolution on March 18, 2019.

Both parties agree that the tenant provided the landlord with her forwarding address on the March 4, 2019 on the move out condition inspection report. The tenant refused to sign the move out condition inspection report because she did not agree with contents of the report. Both parties agree that a move in condition inspection report was

completed on August 28, 2018 and that both parties signed in. The move in and move out condition inspection reports were entered into evidence.

Both parties agree that on February 7, 2019 the tenant spoke with the landlord's agent in person and informed her that she would likely be moving out of the subject rental property for March 1, 2019 but would let the landlord's agent know if this eventuality occurred. Both parties agree that the tenant texted the landlord on February 20, 2019 and informed the landlord's agent that she would be moving out of the subject rental property for March 1, 2019.

The landlord's agent testified that the landlord is seeking the following damages arising out of this tenancy:

<b>Item</b>	<b>Amount</b>
Cleaning	\$140.00
Replacement of living room blinds	\$75.00
Garbage removal	\$40.00
Clean rugs	\$80.00
Filing fee	\$100.00
<b>Total</b>	<b>\$435.00</b>

### Cleaning

The landlord's agent testified that the tenant left the kitchen and oven very dirty and the window tracks covered in mould. The landlord's agent testified that she hired a cleaner to do the following work, for the following amounts:

- Clean oven: \$50.00;
- Clean kitchen: \$40.00; and
- Clean windows: \$50.00.

The landlord's agent entered into evidence photographs evidencing the dirty condition of the above items. Receipts for same were entered into evidence.

The tenant testified to the following facts. The tenant did not clean the oven. The tenant did not clean everywhere in the kitchen because she is not tall enough to reach everything and not strong enough to pull out the appliances. The tenant testified that the windows were covered in mildew, not mould, but agreed she did not wipe them down.

### Blinds

The landlord's agent testified that the tenant damaged blinds in the living room of the subject rental property. The move in condition inspection report states that the blinds in the living room were in good condition. The move out condition inspection report states that the blinds were broken. The landlord's agent entered into evidence a photograph of the living room blinds which shows that they are bent in numerous places. The landlord's agent testified that the blinds were also missing the pull cord which moved them up and down.

The landlord's agent testified that she paid approximately \$150.00 to replace the blinds. Receipts for same were not entered into evidence; however, the landlord's agent did enter into evidence a screen shot of an online advertisement in the amount of \$79.99. The landlord's agent testified that two of the shown blinds were purchased to replace the damaged living room blinds. The landlord's agent testified that the landlord is only seeking \$75.00 for the replacement of the blinds as they were not brand new. The landlord's agent testified that the blinds were approximately three years old. The tenant testified that the blinds were in good condition when she moved in and that some of the slats were bent but denied that the pull cord was missing.

### Garbage Removal

The landlord's agent testified that the tenant abandoned a number of items at the subject rental property including children's toys, blankets and garbage. The landlord's agent testified that the tenant did not clean out the fridge.

The landlord's agent testified that her father hauled all the abandoned items to the dump which took approximately three hours and cost \$19.90. A receipt for same was entered into evidence. The landlord's agent testified that the landlord is seeking \$20.10 for her father's labour. The landlord entered into evidence photographs of children's toys and other items left at the subject rental property as well as a photograph of the inside of the fridge showing a number of food items inside. The landlord's agent testified that she did not believe the items left by the tenant had any monetary value.

The tenant testified that she planned on returning for her child's toys and that the landlord refused to allow her access to the subject rental property after March 1, 2019. The tenant testified that she would have liked to have retrieved the remainder of her

items. The tenant testified that she cleaned out the inside of the fridge though she may not have wiped down the outside.

The landlord's agent testified that she would have allowed the tenant to return after March 1, 2019 to retrieve the remainder of her items as it would have saved a trip to the dump. The landlord's agent denied that the tenant was not permitted to retrieve the remainder of her items after March 1, 2019.

### Clean Rugs

The landlord's agent testified that the area rug in the bedroom and living room were left very dirty and she hired a cleaner to clean them at a cost of \$80.00. A receipt for same was entered into evidence. The landlord's agent testified that after the rugs were cleaned, it became apparent that they were not salvageable and were then thrown out. The landlord's agent testified that the rugs were between 8 to 10 years old and were in good condition when the tenant moved in. The move in condition inspection report states that the area rug in the bedroom was in good condition and the area rug in the living room was in fair condition. No comments regarding the area rugs were made in the move out condition inspection report.

The tenant testified that the subject rental property was a hostel for 40 years and the carpets were in the same condition when she moved in as when she moved out.

### Analysis

#### Cleaning

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Residential Tenancy Branch Policy Guideline #1 states: "The tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould."

Based on the testimony of both parties, I find that the tenant did not clean the oven, the entire kitchen or the window sills when she vacated the subject rental property, as required by section 37 of the *Act* and Residential Tenancy Policy Guideline #1. I therefore find that the tenant is responsible for the cost of cleaning the aforementioned items in the amount of \$140.00.

I find that if the tenant was unable to personally clean the subject rental property at the end of the tenancy, it was her responsibility to find someone who could.

### Blinds

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Residential Tenancy Policy Guideline #1 states: "The tenant may be liable for replacing internal window coverings, or paying for their depreciated value, when he or she has damaged the internal window coverings deliberately, or has misused them e.g. cigarette burns, not using the "pulls", claw marks, etc.

Based on the testimony of both parties, I find that the tenant bent the living room blinds. I also find that the landlord has failed to quantify her loss, in this case the amount of money she spent replacing the blinds, as she did not enter into evidence her receipt for the new blinds she purchased.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the landlord has proved that the tenant damaged the blinds in the living room but has not proven the

cost of the replacement of those blinds. Pursuant to Residential Tenancy Policy Guideline 16, I find that the landlord is entitled to \$75.00 in nominal damages.

### Garbage Removal

Section 24(1)(a) of the Residential Tenancy Regulation states that a landlord may consider that a tenant has abandoned personal property if the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended.

While texting is not a recognized form of service under the *Act*, I find that the landlord was sufficiently served, for the purposes, of this *Act*, pursuant to section 71 of the *Act*, with the tenant's notice to end tenancy, on February 20, 2019 as the landlord's agent confirmed receipt of this notice on that day.

The tenant testified that the landlord refused to grant her access to the subject rental property after March 1, 2019 to collect the remainder of her possessions. This was denied by the landlord's agent. The testimony of the parties in this regard is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find that the tenant has not proved that the landlord refused to allow her to return to the subject rental property to collect the remainder of her possessions.

The tenant's notice to end tenancy stated that the tenant would vacate the subject rental property on March 1, 2019. I find that it was reasonable for the landlord to believe that the tenant abandoned the remainder of her property at the subject rental property given that the majority of the tenant's belongings were removed, and the tenant had ended the tenancy effective March 1, 2019.

Section 25(2)(a) and (b) of the Residential Tenancy Regulation states that the landlord may dispose of the abandoned property in a commercially reasonable manner if the landlord reasonably believes that:

- (a) the property has a total market value of less than \$500, or
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale

Based on the testimony of both parties and the photographs entered into evidence, I find that the items left by the tenant at the subject rental property had a total market value of less than \$500.00 and that the cost of removing, storing and selling the property would be more than the proceeds of its sale.

I find that the tenant is responsible for the cost of dumping the items and the cost of the labour to dump the items, for a total of \$40.00.

### Rugs

Residential Tenancy Policy Guideline #1 states that the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

I find that the tenant was responsible for cleaning the carpets at the end of the tenancy, as she did not do so, she is responsible for the cost of that cleaning in the amount of \$80.00.

### Security Deposit

Section 38 of the *Act* states that 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.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38 of the *Act*.



As the landlord was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$435.00 from the tenant's security deposit in satisfaction of her monetary claim against the tenant.

I Order the landlord to return the remaining \$15.00 from the tenant's security deposit to the tenant.

### Conclusion

I issue a Monetary Order to the tenant under the following terms:

<b>Item</b>	<b>Amount</b>
Security deposit	\$450.00
Less cleaning	-\$140.00
Less nominal damages for blinds	-\$75.00
Less garbage removal	-\$40.00
Less rug cleaning	-\$80.00
Less filing fee	-\$100.00
<b>Total</b>	<b>\$15.00</b>

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*.

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Dated: July 10, 2019

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Residential Tenancy Branch