



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDCL-S & FFL

The Application for Dispute Resolution filed by the Tenant seeks a monetary order in the sum of \$1200 for double the security deposit.

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$600 for damage, failure to sufficiently clean and failure to return belongings owned by the landlord.
- b. An order to retain the security deposit
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by the Tenant was served on the landlord by mailing, by Express Post on July 24, 2019. I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by the Landlord was served on the Tenant by mailing, by Express Post to the forwarding address provided by the Tenant on August 24, 2019.

### Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to a monetary order and if so how much?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on February 1, 2017. The rent is \$1000 per month payable on the first day of each month. The tenant paid a security deposit of \$ at the start of the tenancy. The tenant(s) failed to pay the rent for the months of September and the sum of \$800 remains owing. The tenant(s) have remained in the rental unit.

There is a great deal of animosity between the parties. Much of the evidence is in dispute. The landlord failed to provide photographic evidence of the alleged damage, a Condition Inspection Report, receipts and other documentary evidence that would prove the quantum of his alleged loss.

The tenant testified the landlord failed to provide her with any photographs, documents and other evidence which he is now relying on.

The landlord testified the tenant failed to adequately clean the rental unit. The tenant denies this and produced a large number of photos showing that the rental unit was in good condition. The landlord testified those photos were taken at the start of the tenancy. The tenant disputes this saying why would she take photos at that time.

The landlord testified the tenant stole a number of items from him including 3 curtain rods (@\$60 each), 2 new curtains totaling \$80., one door curtain \$60, telus cords/remote totaling \$150, keys etc. The tenant denies that she took any of the landlord's belongings.

After carefully considering the disputed evidence I made the following factual determinations:

- I determined the parties did a walk through at the start of the tenancy but the landlord failed to prepare a Condition Inspection Report.
- I accept the testimony of the Tenant that she provided the landlord with her forwarding address in writing on July 1, 2019. The landlord denied receiving a forwarding address. The tenant provided photos showing she left the forwarding address taped to the front door and to the fridge. The tenant's evidence is preferred to the landlord on this point.
- The tenant initially denied being given an opportunity to conduct a Condition Inspection at the end of the tenancy. The landlord testified they had arranged a time for this to happen. However, upon questioning she testified she left before a Condition Inspection could occur because the landlord was aggressive and she had

been advised to do so by the police. I determined the tenant abandoned the rental unit. However, the landlord failed to provide a copy of the Condition Inspection Report for the hearing.

Tenant's Application:

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless:

- the parties have agreed in writing that the landlord can retain the security deposit,
- the landlord already has a monetary order against the tenants
- the landlord files an Application for Dispute Resolution within that 15 day period.
- The right to claim against the security deposit has been extinguished.

It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Section 23 of the Act provides that the parties must participate in a Condition Inspection at the start of the tenancy. It further provides that the landlord must complete a condition inspection report in accordance with the regulations. If the tenant does not participate the landlord is obliged under section 23(6) to make the inspection, complete and sign the report. Section 24(2) provides that the landlord's claim against the security deposit is extinguished if the landlord does not complete the condition inspection report and give a copy of it to the tenant.

Section 36(2) provides as follows:

36 (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- a. does not comply with section 35 (2) [2 opportunities for inspection],
- b. having complied with section 35 (2), does not participate on either occasion, or
- c. having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Policy Guideline #17 includes the following:

8. In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. For example, if the landlord failed to give the tenant a copy of the inspection done at the beginning of the tenancy, then even though the tenant may not have taken part in the move out inspection, the landlord will be precluded from claiming against the deposit because the landlord's breach occurred first.

The landlord's right to claim against the security deposit was extinguished by the landlord's failure to prepare a Condition Inspection Report at the start and the end of the tenancy. Although the tenant or someone on her behalf failed to participate in a Condition Inspection at the end of the tenancy I determined her right to claim against the deposit was not extinguished as the landlord failed to prepare a Condition Inspection Report at the start of the tenancy.

#### Analysis

The tenants paid a security deposit of \$600 on or about March 1, 2019. I determined the tenancy ended on July 1, 2019. I further determined the tenants provided the landlord with her forwarding address in writing on July 1, 2019. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. The tenant's right to claim against the security deposit was not extinguished.

As a result I determined the tenants have established a claim against the landlord for double the security deposit or \$1200.

#### Landlord's Application - Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set

out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Policy Guideline #16 includes the following:

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### C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.”

The Applicant has the burden of proof to present sufficient evidence to prove each of his/her claims on a balance of probabilities. Many of the claims are in dispute. The landlord failed to provide evidence such as photographs, receipts, witness statements, Condition Inspection Reports etc. to prove his claims. With respect to each of the landlords' claims I find as follows:

- a. The landlord claimed for 3 new curtain rods @\$60 alleging the tenant had stolen these items. The tenant denied taking them. I determined the landlord failed to provide sufficient proof to establish that the tenant had taken these items and the value of this loss. As a result this claim is dismissed.
- b. The landlord claimed \$80 for 2 new curtains and \$60 for one door curtain alleging the tenant had stolen these. The tenant denied taking them. I determined the landlord failed to provide sufficient proof to establish that the tenant had taken these items and the value of this loss. As a result these claims are dismissed.
- c. The landlord claimed \$56 claiming the tenant broke a screen. The tenant denies this. I determined the landlord failed to provide sufficient evidence to prove this claim and/or the value of the loss. .

- d. The landlord claimed the sum of \$150 for the cost of Telus cords and the remote. The tenant denies taking these items. I determined the landlord failed to provide sufficient proof to establish that the tenant had taken these items and the value of this loss. As a result these claims are dismissed.
- e. The landlord claimed the sum of \$250 for the cost of cleaning (@\$25 per hour for 10 hours). The landlord failed to provide photos to prove the rental unit was not sufficiently cleaned and failed to provide receipts. As a result I dismissed this claim.
- f. The landlord claimed \$200 for the cost of changing the locks. The tenant denies taking the keys. The landlord failed to prove the tenant took the keys or the cost of changing the locks. This claim is dismissed.
- g. The landlord claimed the sum of \$20 for mail key replacement and \$10 to cut 2 keys. I dismissed these claims as the landlord failed to provide sufficient evidence to prove the took these items or the cost the landlord has allegedly incurred.
- h. The landlord claimed \$50 for a dump fee to remove an old couch and other garbage. The landlord failed to provide dump fee receipts or photos of the belongings he was removing. I determined the landlord failed to prove this claim.

In conclusion I determined the landlord failed to prove his claims and as a result those claims including the claim to recover the cost of the filing fee are dismissed.

Conclusion:

I ordered that the landlord pay to the Tenant the sum of \$1200. I dismissed the landlord's claim in its entirety. .

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on the parties.**

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 12, 2019

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Residential Tenancy Branch