



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT MNDCT  
                             FFL MNDCL-S MNRL-S

### Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenant and an application made by the landlord. The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the application. The landlord has applied for a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant.

The parties both attended the hearing and each gave affirmed testimony. The tenant was accompanied by an Advocate, and also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing the landlord testified that there are no rental arrears and the utility bill has also been paid by the tenant. Therefore, I dismiss the landlord's application for a monetary order for unpaid rent or utilities.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy

agreement, and more specifically for loss of use of a portion of the rental unit, medical expenses and return of the security deposit and pet damage deposit?

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for professional carpet cleaning?
- Should the landlord be permitted to keep the security deposit or pet damage deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The tenant** testified that this month-to-month tenancy began on April 15, 2018 and ended on September 30, 2019, however the tenant actually vacated the rental unit on September 29, 2019. Rent in the amount of \$1,050.00 per month was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$525.00 as well as a pet damage deposit in the amount of \$100.00, both of which are still held in trust by the landlord. The rental unit is one of 4 units in a 4-plex, and the landlord does not reside on the property. A copy of the tenancy agreement has been provided as evidence for this hearing by the landlord. The tenant provided the landlord with a forwarding address in writing on September 30, 2019.

The tenant further testified that the landlord acknowledged at the beginning of the tenancy that the deck on the rental unit had a weak spot and that it required repairs. The landlord advised the tenant at that time that it was damaged by previous tenants and to not walk on that part of the deck, but it was never repaired. The tenant lost use of 100% of the deck, which was only part of this rental unit, and not the others in the building. Photographs of the deck have been provided as evidence for this hearing. On July 4, 2019 the tenant gave the landlord a letter, a copy of which has been provided for this hearing asking for immediate repairs. Three months later the tenant's right foot went through it while clearing the deck off to move out of the rental unit. The tenant suffered 2 scratches to her foot and it hurt to walk on it.

The tenant claims:

- \$800.00 for loss of use of the entire deck;
- \$200.00 for doctor and medical expenses, including mileage;
- \$2,887.50, being 25% of the rent paid due to the landlord's failure to complete the repairs;

- \$1,250.00 for double return of the security deposit and pet damage deposit. and
- \$100.00 as recovery of the filing fee.

The tenant also testified that no move-in condition inspection report was completed at the beginning of the tenancy.

With respect to the landlord's claim, the tenant testified that the carpets were cleaned by the tenant's witness with a professional carpet cleaner. The tenant did not smoke inside the rental unit.

**The tenant's witness** testified that she is a friend of the tenant and was present at move-in. The landlord had indicated that she had never completed a move-in condition inspection report before and the witness explained the requirements, having been a landlord and a tenant. There were marks on the kitchen floor that appeared to be blood spatter, and the landlord said it was not blood, but a stain. However the tenant cleaned it and the stain was not there at move-out, which the witness pointed out to the landlord at move-out.

The witness also testified that at move-in the railing on the deck was rotten and the witness asked the landlord to make a note of it. The weak spot on the deck was about 3 ½ feet in circumference, and the tenant had a table over it so that no weight would be on that spot. No one could go on that side of the deck. It was only ½ inch plywood, which likely isn't even legal. The witness also saw the scratches on the tenant's ankle, and delivered a letter to the landlord's home on August 27, 2019 advising that the tenant's foot went through the deck. A copy of the letter has been provided for this hearing.

The witness cleaned the carpets in the rental unit for the tenant, in the basement and the rest of the rental unit. The witness owns a machine and used industrial cleaning solutions, and a photograph of the machine used has been provided for this hearing. The witness was present for a move-out inspection on behalf of the tenant, at which time the landlord said all was fine. After cleaning, the witness could smell what she believed to be wet and old underlay.

**The landlord** agrees that she received the tenant's forwarding address in writing on September 30, 2019 and the tenancy ended that day. The landlord also agrees that no move-in or move-out condition inspection reports were completed, however the tenant signed the Addendum to the tenancy agreement stating that the carpets would be professionally cleaned at move-out. Getting a little machine does not satisfy that. On September 30, 2019 the landlord looked at the carpet and there was a smell in the

lower level of the rental home. On October 7, 2019 the landlord had a professional carpet cleaner at the rental unit who said that he also noticed a smell and said he would deodorize for the smoke smell in the basement. Also, water that came out of that machine was brown, which would have been clear if it had been professionally cleaned by the tenant as required.

The landlord also testified that the deck is actually a 2<sup>nd</sup> floor balcony and does not believe the tenant's foot went through the floor. The tenant's foot is bigger than the hole.

On August 26, 2019 the landlord gave the tenant a notice to end the tenancy for cause, and the next day received the letter from the tenant's witness saying that the tenant had put her foot through the deck and asked for repairs. It was only a 2 or 3 inch hole, and the top of the flooring was swollen but not broken through. The tenant was able to use 90% of the deck, and the tenant had the deck fully occupied with plants and furniture. To say she wasn't able to use the balcony at all is not true; it was over-loaded with the tenant's possessions.

In March, 2019 the landlord provided the tenant with a letter stating that the balcony would be painted in mid-August; it takes about 3 months to book such work in the summer, but the landlord did not ignore it. Two contractors looked at it in November, 2018 and March, 2019 and advised that because it was such a small spot, it could not be repaired, but the entire deck would have to be replaced. It is not a covered balcony, however the tenant was advised that as long as the tenant kept it dry, it would be fine.

The landlord also testified that the tenant knew that the damage was identified and did her best to accommodate the problem. It started at 3 inches in diameter and was repaired in October, 2019 after the tenant moved out and after all of the tenant's belongings were cleared off the deck. Photographs have also been provided by the landlord. The damage wasn't that bad until August 27, 2019, and the landlord believes the tenant damaged it to make it bigger, although the landlord had not been on the balcony since the tenant moved in. The plywood was ¾ inch plywood and was soft and spongy but not dangerous unless hit was something.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totalling \$329.48:

- \$209.48 for carpet cleaning;
- \$120.00 for an unpaid utility bill; and
- \$100.00 as recovery of the filing fee.

The landlord wasn't sure if the tenant had paid the utility bill, but did so on or about October 10, 2019 and the landlord withdraws the claim for the utility bill. The Residential Tenancy Branch told the landlord to hang onto the security deposit

### Analysis

Firstly, the *Residential Tenancy Act* places the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed, and the regulations go into great detail of how that is to happen. Where a landlord does not comply, the landlord's right to claim against the security deposit or pet damage deposit for damages is extinguished, meaning that a landlord may not apply to keep the deposit(s) for damages. In this case, neither of the report was completed. The landlord made a claim for damages as well as unpaid utilities, but made no claim for unpaid rent and withdrew the claim for unpaid utilities. The landlord testified that she didn't know if the utilities had been paid or not when the claim was made, but were in fact paid by the tenant. Therefore, I find that the landlord had no claim for unpaid rent or utilities and the landlord's right to make a claim against the deposits for damages is extinguished.

Where a party makes a monetary claim against another party for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate the damage or loss suffered.

With respect to the landlord's claim for carpet cleaning, I have reviewed the tenancy agreement and the photograph provided by the tenant of the machine used to clean the carpet at the end of the tenancy. The term in the Addendum to the tenancy agreement states: "1. Carpets will be professionally cleaned upon move in, so you the tenant will have then professionally cleaned upon move out." Given the testimony of the tenants witness about what appeared to be a blood stain, and considering the photographs provided for this hearing, I am not satisfied that the carpets had been professionally cleaned upon move in. Further, the condition inspection reports are evidence, and given that there are no such reports, I am not satisfied that the landlord has established that the machine used or the tenant's witness are not professional. The landlord's application for monetary compensation for carpet cleaning is dismissed.

Since the landlord's application has not been successful, the landlord is not entitled to recovery of the filing fee, and I dismiss that portion of the landlord's application.

With respect to the tenant's claim for return of the security deposit and pet damage deposit, it's not clear what the landlord asked staff at the Residential Tenancy Branch, however a landlord who makes a claim in the total amount of \$329.48 would not be advised to keep \$625.00 of the deposits.

I advised the parties in the hearing that since the tenancy ended on September 30, 2019 and the landlord received the tenant's forwarding address in writing the same day, and given that the landlord made the application for dispute resolution on October 15, 2019 which is within 15 days as required by the *Act*, the landlord had complied with the law. However, having found that the landlord's right to claim against the security deposit for damages is extinguished, and given that the landlord had no claim against the tenant for unpaid rent or utilities, the landlord had no other option in law but to return the security deposit and pet damage deposit to the tenant within 15 days of the date the landlord received the tenant's forwarding address in writing. I find that the tenant is entitled to double the amount of the pet damage deposit and security deposit, for a total of **\$1,250.00**.

The tenant has also claimed \$800.00 for loss of use of the deck and an additional \$2,887.50, being 25% of the rent paid due to the landlord's failure to complete the repairs. Considering the photographs the entire balcony needs to be replaced. It appears that there are rotted wooden supports, railings and flooring. A landlord is required to maintain a rental unit. However, I find that the 2 amounts claimed are one in the same. I also find that the tenant has failed to establish that the balcony amounted to 25% of the rental property.

The *Act* does not allow me to make any award to punish the landlord, but allows me to make a nominal award 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.

The law also provides that I may order aggravated damages where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services, but there must be significant damage or loss either deliberately or through negligence. In this case, the landlord was aware that the balcony needed replacing and was taking steps to have that completed. The tenant did not dispute the landlord's testimony that the landlord had contractors look at it in November, 2018 and in March, 2019, and that the tenant was aware of the plan to paint it in mid-August. I

find that the tenant has not proved deliberate or negligence by the landlord and aggravated damages has not been proven. However, I find that nominal damages have been proven and I find that the tenant has established a claim for nominal damages in the amount of **\$800.00**, which amounts to less than \$50.00 per month during the 17 ½ month tenancy.

I am not satisfied that the tenant has established any costs for mileage or medical expenses.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the **\$100.00** filing fee.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$2,150.00**.

This order is final and binding and may be enforced.

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: December 06, 2019

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Residential Tenancy Branch