



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

This hearing was scheduled to convene at 1:30 p.m. this date by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property; 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 for the cost of the application.

An agent for the landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord's agent testified that the tenant was served with the Application for Dispute Resolution, notice of this hearing and all evidence by registered mail on August 18, 2020 and has provided a Canada Post cash register receipt containing that date, as well as a Canada Post tracking document showing that the registered mail was delivered on August 25, 2020. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence of the landlord has been reviewed and is considered in this Decision.

### Issues to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property, specifically with respect to carpet cleaning?
- 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 liquidated damages?

- Should the landlord be permitted to keep the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on March 1, 2020 and was to expire on February 28, 2021. However the tenant vacated the rental unit on July 31, 2020. Rent in the amount of \$1,025.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears to the end of July, 2020. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$512.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant gave written notice on June 24, 2020 to vacate the rental unit effective July 31, 2020, and a copy has been provided for this hearing. The tenancy agreement provides for Liquidated Damages of \$500.00 if the tenant vacates or causes the landlord to end the tenancy prior to the end of the fixed term, not as a penalty but as a pre-determined cost of the landlord to re-rent. The landlord claims \$500.00 for liquidated damages.

The Addendum to the tenancy agreement also provides that: "11. Carpet cleaning will be done by a professional cleaning company hired by the Landlord, This will be charged to the Tenant and deducted from T:enant's security deposit upon move-out." The landlord's agent testified that is common with all apartment units regardless of the duration of the tenancy, and that new tenants appreciate that. The landlord has provided a copy of an invoice and the landlord claims \$200.00 as against the tenant. The invoice is for 3 apartments and is broken down into separate amounts for each of the apartments, plus GST of 5%.

The landlord received the tenant's forwarding address in writing on July 31, 2020 on the move-out condition inspection report, which has been provided for this hearing. It also shows that the carpet in the living room required cleaning, and contains a signature of the tenant at move-out agreeing that the report fairly represents the condition of the rental unit. It also states that the tenant had not provided a receipt for professional carpet cleaning to the landlord.

### Analysis

I have reviewed the tenancy agreement, and I am satisfied that the tenant agreed to liquidated damages at the commencement of the tenancy in the amount of \$500.00. I also find that it is not a penalty but a pre-determined estimate of the cost associated with

renting if the tenant vacates earlier than the fixed term. I have also reviewed the tenant's notice to end the tenancy, which is dated June 24, 2020 and contains an effective date of vacancy of July 31, 2020, ending the tenancy earlier than the expiry of the fixed term. Therefore, I am satisfied that the landlord has established a claim of **\$500.00** for liquidated damages.

During the course of the hearing, I alerted the landlord's agent to the *Residential Tenancy Act* which speaks to prohibitions respecting security deposits. It states, in part (underlining added):

**20** A landlord must not do any of the following:

- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;
- (b) require or accept more than one security deposit in respect of a tenancy agreement;
- (c) require a pet damage deposit at any time other than
  - (i) when the landlord and tenant enter into the tenancy agreement, or
  - (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;
- (d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;
- (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

In this case, the move-out condition inspection report shows that the living room carpet was not clean at the end of the tenancy, and therefore I find that the landlord has established that carpet cleaning was required. However, I have reviewed the Invoice, which covers 3 rental units, and the rental unit for this tenancy cost \$139.00, and 5% GST amounts to \$6.95, for a total of **\$145.95**, not \$200.00 as claimed.

I also find that the landlord's application was filed within 15 days of the date the landlord received the tenant's forwarding address in writing and the date the tenancy ended, as required by the *Act*.

Since the landlord has been successful the landlord is also entitled to recovery of the **\$100.00** filing fee.

I hereby order the landlord to keep the \$512.50 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenant for the difference in the amount of \$233.45 (\$500.00 liquidated damages + \$145.95 carpet cleaning + \$100.00 filing fee = \$745.95 – \$512.50 security deposit = \$233.45).

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$512.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$233.45**.

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: November 16, 2020

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Residential Tenancy Branch