



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Kiwanis Village Society and  
[tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **MNDL-S, FFL, MNDCL**

### **Introduction**

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit, cleaning, other damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit.

The landlord's agents appeared for the hearing; however, there was no appearance on part of the tenant. Since the tenant did not appear, I explored service of hearing materials upon the tenant.

The landlord's agent submitted that the proceeding package was sent to the tenant, via registered mail sent on October 22, 2020, using the tenant's forwarding address received from the tenant's daughter in an email. The landlord submitted that the tenant's health was in decline and the tenant's daughter (referred to by initials SM) ordinarily represented or acted on behalf of the tenant, including at a previous dispute resolution proceeding (file number referenced on the cover page of this decision). The landlord provided a copy of the email and the registered mail receipt, including tracking number. Canada Post recorded that the registered mail was delivered on October 26, 2020; however, the package re-entered the postal system on November 24, 2020. The landlord's agent testified that they contacted Canada Post to find out why the package was showing as being delivered and then re-entered the postal system. The landlord was informed that the package was delivered and then the registered mail package was subsequently found opened in the street and someone put it back into the postal system.

The landlord stated the original claim was based on estimates only. When actual costs were determined the landlord filed an Amendment to an Application for Dispute Resolution to decrease the claim against the tenant. The Amendment, a Monetary Order worksheet providing for the decreased claim, and the supporting materials were

sent to the tenant at the forwarding address, via registered mail on January 13, 2021. The landlord provided a registered mail receipt, including tracking number, as proof of service. A search of the tracking number showed that two notice cards were left by Canada Post; however, the registered mail was not picked up and is being returned as "unclaimed".

Section 90 of the Act deems a person to be in receipt of documents mailed to them five days after mailing, even if the person refuses to accept or pick up their mail. Based on the unopposed evidence before me, I find the tenant was in receipt of the original proceeding package when it was delivered on October 26, 2020 and I find the tenant is deemed to be in receipt of the Amendment and other related materials on January 18, 2021 which is five days after they were mailed. I am satisfied the landlord served the Amendment and other related materials so that they would be received by the tenant at least 14 days before the scheduled hearing date, as required under the Rules of Procedure. Therefore, I continued to hear the landlord's claims against the tenant, as amended, without the tenant present.

#### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant, as amended?
2. Is the landlord authorized to retain the tenant's security deposit?

#### Background and Evidence

A tenancy originally commenced on July 3, 2014 for a fixed term set to expire on July 31, 2014. The parties executed a subsequent tenancy agreement for a tenancy set to commence on August 1, 2015.

The tenant paid a security deposit of \$350.00.

A move in inspection report was completed with the tenant at the start of the tenancy.

The tenant was prohibited from smoking in the rental unit pursuant to term 17.26 in the Addendum to the tenancy agreement. The landlord issued a One Month Notice to End Tenancy for Cause to the tenant dated February 12, 2020. The tenant's daughter filed to dispute the One Month Notice indicating it was received on July 25, 2020 (file number provided on cover page of this decision). At the hearing held on August 31, 2020 the landlord agreed to cancellation of that One Month Notice because the notice was

defective without the landlord's signature and the Arbitrator recorded that the tenancy would continue until it legally ended. The landlord submitted that after the hearing ended, the landlord issued a new One Month Notice on August 31, 2020 with a stated effective date of September 30, 2020. The One Month Notice dated August 31, 2020 was not disputed and the tenancy was set to end on September 30, 2020.

A move-out inspection was scheduled to take place at 3:00 p.m. on October 1, 2020; however, at approximately 10:00 a.m. on October 1, 2020 the landlord received an email from the tenant's daughter saying they would not be attending the move-out inspection and for the landlord to return the security deposit. The landlord's agent proceeded to inspect the unit and notified the tenant's daughter of certain deficiencies noted in the rental unit including the presence of nicotine damage, insufficient cleaning and abandoned furniture being left behind. The landlord gave the tenant's daughter the opportunity to correct deficiencies and proposed October 5, 2020 as another opportunity to perform a move-out inspection together. Neither the tenant, nor her daughter appeared for an inspection on October 5, 2020 and the landlord proceeded to complete the move-out inspection report without the tenant or her daughter present. The landlord proceeded to file this Application for Dispute Resolution, based on estimates.

As stated earlier, the landlord then amended the claim to reflect actual losses, which were less than that originally estimated. Below, I have summarized the landlord's claims against the tenant, as amended.

#### **Garbage removal, hauling and dump fees -- \$550.00**

The landlord submitted that the tenant left garbage and abandoned property at the rental unit when the tenancy ended. The landlord had the items removed and disposed of at a cost of \$550.00. The landlord provided photographs, the condition inspection report, and an invoice in support of the claim.

#### **Cleaning, priming and painting to rectify smoke damage -- \$1298.83**

The landlord submitted that the rental unit had been newly painted at the start of the tenancy and at the end of the tenancy the walls, ceiling, doors and trim were heavily stained by nicotine and smoke smell. The landlord hired a painter who had to first wash the walls, then prime them with heavy duty blocking primer in an attempt to block the nicotine and smoke, and then apply two coats of paint. The ceilings were also given two heavy coats of primer in an effort to deal with the nicotine, and the doors and trim were painted as well.

The landlord submitted that it is unusual for the painter to have to wash the walls before painting or apply heavy coats of primer but the nicotine staining and smoke smell required this extra effort.

The landlord was charged a total of \$2768.83 to wash, prime and paint the rental unit, including tax.

The painter provided an estimate to the landlord as to how much it would cost to have painted the unit had it not been for the smoke and nicotine stains which was between \$1300.00 and \$1400.00.

In recognition of wear and tear over a six year tenancy, the landlord subtracted \$1470.00 (\$1400.00 plus GST) from the painter's invoice and is claiming the difference of \$1298.83 from the tenant as the additional cost incurred due to smoking in the rental unit.

The landlord provided photographs, the condition inspection report, and correspondence with the painter in support of this claim.

#### **Carpet cleaning and deodorizing -- \$210.00**

The landlord submitted the carpets required cleaning and deodorizing at the end of the tenancy and the landlord is seeking to recover the cost to do so in the amount of \$210.00.

The landlord provided an invoice and condition inspection report in support of this claim.

#### **Cleaning -- \$210.00**

The landlord submitted that the rental unit required additional cleaning (aside from the walls washed by the painter) and the landlord is seeking to recover the cost paid to have the additional cleaning performed.

The landlord provided photographs, an invoice, and the condition inspection report in support of this claim.

### **Rent refund overpayment -- \$685.00**

The landlord submitted that it erroneously withdrew rent for October 2020 from the tenant's bank account. The tenant's daughter contacted the landlord concerning the erroneous withdrawal and the landlord immediately sent an electronic funds transfer to the tenant in the amount of \$685.00 and the landlord offered to repay the tenant any NSF fees incurred upon being presented proof of such charges but nothing was received showing charges were incurred by the tenant. After the electronic funds transfer was sent to the tenant by the landlord the rent withdrawal was dishonoured by the bank for insufficient funds. Since the landlord did not end up receiving a payment for October 2020 rent and the tenant was paid a refund for funds not received the landlord seeks to recover the loss.

The landlord provided banking records in support of the amount claimed.

### Analysis

Upon consideration of all of the unopposed evidence before me, I provide the following findings and reasons.

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Section 37 of the Act also requires that a tenant leave the rental unit "reasonably clean" at the end of the tenancy and vacant, which includes removal of all of the tenant's garbage and possessions.

Upon review of the landlord's photographs, move-in and move-out condition inspection reports, and invoices, I accept that the rental unit was not left reasonably clean and there was garbage and/or abandoned possessions left behind. Therefore, I find the landlord entitled to recover the cost to clean the unit, clean the carpets and removal of abandoned property from the tenant in the amounts claimed, as amended.

The landlord's most significant claim pertains to rectifying smoke and nicotine damage. The landlord had the surfaces washed by the painter, multiple coats of heavy duty primer were applied, followed by multiple coats of paint in an effort to remedy the smoke smell and nicotine stains. The condition inspection report, the photographs and the painter's invoice satisfy me that the rental unit had been freshly painted at the start of the tenancy but that it was left with a heavy smoke smell and nicotine stains at the end of the tenancy due to the tenant violating the no smoking term in the tenancy agreement and failing to rectify the damage by the end of the tenancy. The amount claimed by the landlord has taken into account the ordinary cost to repaint the rental unit and I am satisfied the landlord is only claiming the additional costs to remedy the smoke smell and nicotine stains and the tenant is not being charged to rectify ordinary wear and tear. Therefore, I grant the landlord's request to recover \$1298.83 from the tenant to rectify the smoke and nicotine damage to the surfaces in the rental unit.

With respect to the rent withdrawal taken by the landlord, in error, for October 2020, I the banking records presented satisfy me that the erroneous withdrawal refunded to the tenant following notification of an erroneous withdrawal by the tenant's daughter but then the erroneous withdrawal was also reversed by the bank. As a result, the landlord has in effect over-refunded the tenant \$685.00. Therefore, I find it just and appropriate to grant the landlord's request to recover the amount over-refunded.

Given the landlord's success in this Application for Dispute Resolution, I further award the landlord recovery of the \$100.00 filing fee paid for this Application.

The landlord is authorized to retain the tenant's \$350.00 security deposit in partial satisfaction of the amounts awarded to the landlord in this decision.

In keeping with all of the above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, as calculated below:

Garbage removal, hauling and dump fees	\$ 550.00
Smoke and nicotine damage	1298.83
Carpet cleaning and deodorizing	210.00
General cleaning	210.00
Rent refund overpayment	685.00
Filing fee	100.00
Less: security deposit	<u>(350.00)</u>
Monetary Order for landlord	\$2703.83

Conclusion

The landlord is authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance owing of \$2703.83 to serve and enforce upon the tenant.

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: February 11, 2021

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Residential Tenancy Branch