

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: MNDC, MNSD, MND, MNR, FF

## Introduction

This hearing dealt with an application by the tenant for the return of her security deposit and further monetary compensation and a cross-application by the landlord for a monetary order and an order permitting the landlord to retain the security deposit in partial satisfaction of the claim. Both parties participated in the hearing and had opportunity to be heard.

## Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the tenant entitled to a monetary order as claimed?

Did either party extinguish their right to claim against the security deposit?

## Background and Evidence

The parties agreed that the tenancy began on April 1, 2006 and that the tenant paid a \$500.00 security deposit on March 9, 2006. The rental unit is located on the lower floor of a home in which the landlord occupy the upper floor. The parties further agreed that the tenant vacated the rental unit in late December 2008 and provided the landlords with her forwarding address in writing on December 31. The landlords made their application for dispute resolution on June 1, 2009.

The tenant testified that on December 18, 2009 the pipes froze and she had no water and that the temperature was turned up in the unit in an effort to thaw the pipes. The tenant further testified that on December 21 the pipes burst, flooding the kitchen, dining area, living room and hallway. The tenant further testified that it took more than 3 days to dry the carpets and that from the time the flooding occurred, there was a strong, offensive odour in the unit. The tenant testified that she left the unit on December 22 and did not sleep there again because of the smell. The tenant further testified that

throughout the tenancy she did not cook in the rental unit, but would buy take-out which could be easily assembled at home. After the flooding, the tenant stayed with friends and family and testified that she had to eat most of her meals in restaurants. The tenant claims \$408.66 in loss of quiet enjoyment, seeking the return of all rent paid from December 18 – 31 at a daily rate of \$34.19 as well as \$100.00 per day for 12 days in compensation for having to eat in restaurants during that time period. The tenant further seeks the return of her security deposit and compensation under section 38 of the Act.

The landlords testified that the pipes did not freeze until December 20 and that the leak originated outside the kitchen window. The landlords testified that they rented carpet dryers and that the carpets were completely dry after 3 days. The landlords provided photographs showing the stains on the walls of the rental unit and testified that the flood only affected less than half of the floor area. The landlords took the position that the tenant could have prepared meals in the rental unit and insisted that the smell in the rental unit was due to the presence of the tenant's cats.

The landlords made a claim for \$372.78 in unpaid utilities, \$206.80 for carpet cleaning, \$50.00 for the time the landlord spent admitting carpet cleaners when they came to clean, and \$50.00 for two hours of cleaning, which included washing windows, blinds, a louvered closet door and vacuuming carpets. The landlords further claimed a \$500.00 penalty for the tenant refusing a move-out inspection meeting.

The landlords provided copies of utility bills and testified that the tenant had not paid her portion of those bills. The landlords testified that the tenant failed to clean carpets at the end of the tenancy and that the landlords had to vacuum the carpets to remove cat hair and hire carpet cleaners to shampoo the carpets. The landlords testified that one of them had to take two hours off of work to admit the carpet cleaners and pay the bill. The landlords testified that the tenant failed to adequately clean the rental unit and the landlord had to spend 2 hours cleaning. The landlords testified that on December 29, the landlord B.L. met with the tenant and went through the rental unit to inspect, but at that time the tenant had not completely moved out. The landlords filled out a condition inspection report, signed it and left it in the unit.

The tenant acknowledged that she had not paid her share of the utilities, but argued that she should not have to pay for utilities for the period from December 18 – 31. The tenant acknowledged that she did not shampoo the carpets, but argued that she should not have been held responsible for shampooing the main living areas as those areas were damaged by the flood. The tenant testified that she vacuumed the carpets before she left and insisted that further vacuuming should not have been required. The tenant further testified that she cleaned windows at the end of the tenancy and cleaned some blinds, but acknowledged that she may not have cleaned all of the blinds. The tenant testified that she was under the impression that the inspection on December 29 was the move-out inspection and when the signed copy of the condition inspection report was left in the unit on December 31, she noted her disagreement with the landlord's assessment of the condition and signed the report.

### Analysis

First addressing the tenant's claim, the landlords were obligated to provide the tenant with a rental unit which was suitable for habitation. Although the tenant claimed that the pipes froze on December 18, I find that she has not proven this on the balance of probabilities. She has not provided supporting documentation, such as letters to her landlord or witness statements, to prove that the pipes froze on December 18. I find that the pipes froze on December 20 and that they burst on December 21. The parties agreed that the landlord rented carpet dryers and that the dryers were removed from the rental unit on December 23. I find it unlikely that the tenant would have allowed the landlord to remove the dryers if the carpets were still wet at that point. I find that the carpets were dry by the evening of December 23 and that there were three days in which the carpets were wet. The tenant acknowledged that at the time the pipes burst, her carpets had not been vacuumed for some time because her vacuum cleaner had broken. I find it more likely than not that at least some of the odour the tenant complained of would have been a direct result of the pets she kept in the unit. The tenant provided no corroborating evidence to show that the smell in the rental unit was so offensive that she was unable to stay there or that she complained to the landlord that the carpets were still wet after December 23. I find that the tenant has not proven that she was unable to live in the rental unit from December 24 – 31. I find that the

tenant was without water for two days and that the carpets were wet for 3 days. In the month of December the tenant was paying \$33.55 per day in rent. I find that the tenant was substantially deprived of the use of the rental unit for the three days that the carpets were wet and I award the tenant \$100.00 in compensation for those three days. I further find that the tenant did not have water on December 20 and I award the tenant \$10.00 in compensation for that day.

The tenant's claim for \$1,200.00 in compensation for alternative accommodation is dismissed as I have found that the tenant failed to prove that the rental unit was uninhabitable for a substantial period of time. Further, I find that the tenant was in the habit of eating take-out food and I am unable to find that she would have experienced any difference in food costs by eating in a restaurant or taking food out to eat at home.

Section 38 of the Act provides that within 15 days of the end of the tenancy and the date the landlord receives the tenant's forwarding address in writing, the landlord must either apply for dispute resolution to retain the security deposit or return the deposit. I find that the landlord failed to act within that 15 day timeframe and accordingly I find that the landlord lost the right to claim against the deposit and further find that the tenant is entitled to an award of \$500.00 pursuant to section 38(6)(b) of the Act. I award the tenant \$1,000.00 which represents double the security deposit.

Turning to the landlords' claim, I find that the landlord is entitled to the entire amount claimed for utilities, which is \$372.78. There is no evidence that the tenant was unable to use electricity and natural gas during the 4 days in which she was significantly inconvenienced and no evidence showing the amount of electricity used by the carpet dryers. I award the landlords \$372.78.

I find that after a tenancy of 2 ½ years the tenant would have been obligated to clean the carpets at the end of the tenancy regardless of whether the rental unit had flooded. I find that the landlord is entitled to recover the \$206.80 paid to the carpet cleaners and I award the landlords that sum. The landlords' claim for 2 hours of the landlord's time to admit and pay the carpet cleaners is dismissed as the landlords did not prove that any loss of income was suffered.

The landlord did not provide photographs or any other evidence to support their testimony that windows were not cleaned or the carpets not vacuumed at the end of the tenancy. In the absence of such supporting evidence, I find that the tenant cleaned the windows and vacuumed. As the tenant did not claim to have completely cleaned the blinds or the closet door, I find that the landlords are entitled to recover \$35.00 to compensate them for the time spent cleaning the blinds and closet door and I award the landlords that sum.

The landlords claim a penalty for the tenant refusing a move-out condition inspection. The Act does not provide for such a penalty and the claim is dismissed. In any event, I find that the fact that the landlords chose to inspect the rental unit with the tenants on December 29 and did not provide the tenant with a Notice of Final Opportunity to Schedule a Condition Inspection Report as required by the Regulations, which led the tenant to believe that an inspection had been completed. I find that the tenant has not extinguished her right to claim against the security deposit because she participated in an inspection on December 29.

In summary, the tenant has been awarded \$1,110.00 which represents double the security deposit and \$110.00 for loss of quiet enjoyment. The landlords have been awarded \$614.58 which represents \$372.78 for utilities, \$206.80 for carpet cleaning and \$35.00 for cleaning. I find it appropriate that each party bear their own filing fee. I find it appropriate to set off the awards as against each other which leaves a balance in favour of the tenant in the amount of \$495.42. I order the landlord to pay this sum to the tenant forthwith and I grant the tenant a monetary order in that amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### Conclusion

The landlord is awarded \$614.58 and the tenant is awarded \$1,110.00. The tenant is granted a monetary order for \$495.42.

Dated June 24, 2009.

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