



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a monetary order for damage to the unit, site or property; for 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 this application.

The landlord attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents on April 16, 2012 by registered mail, the tenant did not attend. The landlord provided evidence of such mailing, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and the testimony provided have been reviewed and are considered in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?  
Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on February 1, 2012 and ended on March 20, 2012. Rent in the amount of \$600.00 per month was payable in advance on the 1<sup>st</sup> day of each month. The landlord also collected a security deposit from the tenant in the amount of \$300.00 on or about February 21, 2012.

The landlord further testified that a hearing was held by the director, Residential Tenancy Branch under file number 784610 wherein the landlord was granted an Order of Possession on March 19, 2012. The tenant moved out the following day, and

returned to the landlord's residence on March 24, 2012, provided a forwarding address in writing, and requested return of the security deposit. The landlord's son spoke to the tenant and asked to complete the move-out condition inspection report first. The tenant agreed but stated that the tenant would return shortly with the keys to the rental unit and to complete the inspection, but the tenant did not return. The Decision of the director, Residential Tenancy Branch also ordered the landlord to keep \$175.00 of the security deposit for unpaid rent and for recovery of the filing fee for the cost of that application. The landlord currently holds the \$125.00 of the remaining deposit.

The tenant was sent a Notice of Final Opportunity to Schedule a Condition Inspection by registered mail on March 27, 2012. The landlord did not hear from the tenant at all and completed the move-out condition inspection report on March 29, 2012. The registered mail was returned unclaimed.

The landlord further testified that during the tenancy the landlord misplaced the landlord's copy of the move-in condition inspection report and had asked the tenant for a copy, but the tenant stated that the tenant's copy was also misplaced. The landlord consequently re-wrote the move-in condition inspection report from memory and completed the move-out condition inspection report on that form. Therefore, the tenant's signature does not appear on the form at move-in or at move-out. The landlord also provided a copy of a Completion Certificate from a restoration company dated September 6, 2011 which states that recent emergency services &/or contents services &/or repairs to the property were completed at the dispute address as evidence that the rental unit was in good condition at the commencement of the tenancy. The move-out condition inspection report shows that the rental unit was not cleaned by the tenant before departing, and cigarette butts were left throughout.

The landlord further testified that the carpet was in need of cleaning after the tenant had vacated the rental unit. An invoice was provided for this hearing in the amount of \$59.26 including rental of the equipment, detergent and a \$10.00 deposit, which the landlord testified was returned to the landlord when the equipment was returned.

The landlord also provided a copy of a receipt from The Home Depot in the amount of \$129.00 but was not able to provide testimony as to all of the items purchased or why they were purchased. A wall plate for a cable connector was broken, and the landlord paid \$2.68 for replacing it; the landlord paid \$29.99 for re-keying the locks; 1 gallon of paint for \$38.97; a receptacle costing \$1.59 for which the landlord could not explain; \$7.98 for another item the landlord was unable to explain; and 2 light bulbs. The receipt also includes "eco fees" for the light bulbs and paint, as well as taxes.

The landlord also testified that the tenant left furniture and debris behind, and the landlord had to rent a truck to haul those items to the local landfill at a cost of \$57.00 although no receipt has been provided. The landlord also claims \$90.00 labor for that work and provided photographs to illustrate the items left behind and the state the rental unit was left in at the end of the tenancy.

The landlord further testified that although the landlord's application is stamped by the Residential Tenancy Branch as being filed on April 11, 2012 the landlord actually filed the application on April 4, 2012 and pointed out that the receipt issued by the Residential Tenancy Branch is evidence of that date.

### Analysis

The *Residential Tenancy Act* requires a tenant to leave a rental unit reasonably clean and undamaged except for normal wear and tear at the end of a tenancy. Further, the regulations state that a move-in and a move-out condition inspection report are evidence of the state of the rental unit at the commencement and the end of the tenancy. In this case, I cannot compare the reports because the tenant has not signed them and the landlord testified that the original move-in condition inspection report was misplaced.

In order to be successful in a claim for damages, the onus is on the landlord to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to mitigate, or reduce such damage or loss.

I have reviewed the tenancy agreement, and I find that the tenant was not prohibited from smoking inside the rental unit. I have also reviewed the photographs provided by the landlord which the landlord testified were taken at the end of the tenancy. I accept the testimony of the landlord that the tenant smoked in the rental unit, and therefore, I find that the tenant was required to clean the carpet at the end of the tenancy. I find that the landlord has established a claim in the amount of \$49.26 for carpet cleaning.

The landlord has not provided any evidence with respect to the cost for removal of items and garbage left behind by the tenant. The landlord claims \$90.00 for the clean-up and \$57.00 for truck rental and dump fees. I find that the landlord has failed to establish the cost of the truck rental or dump fees. With respect to the landlord's time to complete the

clean-up, the landlord did not testify as to how the landlord calculated that amount; no evidence or testimony is before me to establish the number of hours spent on clean-up, or how much per hour the landlord claims. Therefore, I find that the landlord has failed to establish element 3 in the test for damages.

The landlord was not able to explain all of the items purchased from The Home Depot, however I find that the landlord has established a claim in the amount of \$4.99 for grill cleaner, \$2.68 for the wall plate, \$29.99 for new keys, \$13.96 for light bulbs and HST in the amount of \$6.19, for a total of \$57.81 for that receipt.

In summary, I find that the landlord has established a claim in the amount of \$49.26 for carpet cleaning and \$57.81 for the items purchased from The Home Depot as described in the preceding paragraph. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the remaining \$125.00 of the security deposit, and I grant the landlord a monetary order for the difference pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$32.07.

This order is final and binding on the parties 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: June 07, 2012.

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Residential Tenancy Branch