



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for damage and cleaning, for compensation under the Act and the tenancy agreement, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

This tenancy began on November 1, 2008, with the parties entering into a standard form, written tenancy agreement. At the outset of the tenancy the rent was \$875.00 and the Tenant paid the Landlord a security deposit of \$435.00 on November 1, 2008.

On March 29, 2012, the Tenant gave the Landlord a one month Notice to End Tenancy, to be effective for April 30, 2012. There was some discussion about the Tenant vacating early and the Landlord alleges the Tenant said he would be out of the rental unit on April 29, 2012.

At the outset of the tenancy the Landlord and Tenant performed an incoming condition inspection report. Circumstances surrounding the outgoing condition inspection report

are in dispute. The Tenant alleges he did not receive a copy of the condition inspection report and was not provided with two opportunities to participate in the outgoing condition inspection report.

The Landlord is claiming the Tenant left the rental unit with unrepaired damage and did not clean the rental unit to a reasonable state.

The Landlord claims the Tenant failed to repair a glass portioned door, and damaged a floor in the rental unit. The Landlord claims \$134.40 for the door and \$824.41 for repairs to the kitchen and bathroom floor. The Landlord alleges the Tenant damaged the kitchen floor with a home gym and that there were stains, which resemble hair dye, on the bathroom floor.

The Landlord claims the Tenant did not clean window frames, walls, carpets, cobwebs, cupboards, sinks or the toilet. The Landlord further alleges there were burnt out light bulbs, there was food left in the cupboards, that counter tops were not cleaned and that the stove and fridge were not pulled out and cleaned, and that the floor under those appliances was not cleaned.

The Landlord claims \$275.00 for cleaning for 11 hours at \$25.00 per hour, and \$34.99 for cleaning and replacement supplies.

The Landlord has also claimed for developing photographs which she used in the hearing.

In reply, the Tenant agrees that he is responsible for the pane of glass in the door. He also agrees that some of the cleaning was not performed. For example, he agrees he did not clean the bathroom ceiling, or under the stove or fridge.

The Tenant denies that he damaged the kitchen floor or the bathroom floor. He testified that the toilet in the bathroom leaked, and he informed the Landlord about this twice. He says he used a margarine container to catch the drips, but there was some staining. He further testified that there was a tear in the kitchen floor linoleum which got worse over the course of the tenancy, just through normal wear and tear.

The Tenant alleges that he did not get a copy of the move in condition inspection report until it was provided in evidence for this hearing. The Tenant also alleges the Landlord did not provide him with two opportunities to do the move out condition inspection report.

The Tenant testified that on the day planned for the move out condition inspection report, April 29, 2012, he was running late and asked the Landlord to come back later. According to the Tenant, on the next day, April 30, 2012, his girlfriend went to the rental unit to pick up a copy of the tenancy agreement which the Tenant left behind. I note the girlfriend has provided a written statement that she attend the rental unit and she alleges the Landlord's new renter was already in the process of moving in on April 30, 2012.

The Tenant testified that he heard from the Landlord on the 30<sup>th</sup> and that the Landlord was in the rental unit cleaning on that date. The Tenant testified he did not get a second opportunity to do the move out condition inspection report with the Landlord in the rental unit.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenant has breached section 37 of the Act by failing to return the rental unit to the Landlord in a reasonably clean state, and undamaged, except for reasonable wear and tear.

However, I also find that the Landlord failed to follow the Act and regulation and provide the Tenant with a copy of the incoming condition inspection report and failed to provide the Tenant with two opportunities to attend for the outgoing condition inspection report.

Under the policy guidelines to the Act, this must be taken into account in this situation.

Under section 18 of the regulation, the Landlord had to provide the Tenant with a copy of the incoming condition inspection report within seven days of its completion. Also, at the end of the tenancy the Landlord was required to provide the Tenant with a second opportunity, in writing, to attend for the outgoing condition inspection report.

By failing to perform the condition inspection reports as required, the Landlord has extinguished the right to claim against the security deposit under sections 24 and 36 of the Act and should have returned the security deposit to the Tenant. By failing to do this, the Landlord has breached section 38 of the Act and now must return double the security deposit to the Tenant in the amount of \$870.00 (2 x 435.00), plus the interest on the original amount held \$1.09, for a total of **\$871.09**.

Section 67 of the Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that by the Tenant's breaches and by his own admissions he owes the Landlord \$134.40 for the glass in the door, \$275.00 for cleaning, and \$34.99 for cleaning supplies and materials, and \$25.00 towards the Landlord's filing fee for the Application, for a total of **\$469.39**.

Under section 72 of the Act, I offset the security deposit amount due to the Tenant from the award to the Landlord (\$871.09 - \$469.39) and order that the Landlord return to the Tenant the balance of **\$401.70**.

Pursuant to the policy guidelines, I grant the Tenant a monetary order for the balance. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I dismiss the remainder of the Landlord's Application, as I found the Landlord has insufficient evidence to prove the damages to the floors were the responsibility of the Tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 27, 2012.

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Residential Tenancy Branch