



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD MNDC FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both the landlord and the tenant participated in the conference call hearing.

At the outset of the hearing, the tenant confirmed that she had received the landlord's evidence. The landlord did not receive the tenant's evidence; I therefore found the tenant's documentary evidence inadmissible. The tenant gave verbal testimony in the hearing. I have reviewed all testimony and other admissible evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

### Background and Evidence

The tenancy began on July 1, 2012, with monthly rent of \$500. At the outset of the tenancy, the landlord collected a security deposit from the tenants. The tenancy ended on December 31, 2012. The landlord did not carry out a move-in inspection with the tenants at the beginning of the tenancy or a move-out inspection at the end of the tenancy. The tenants gave the landlord their forwarding address in writing on January 6, 2013.

### *Landlord's Evidence*

The landlord stated that a couple of days before the tenancy began, the tenants were \$5 short, and the landlord allowed them to pay \$245 as their full security deposit.

The landlord stated that on December 31, 2012 at around 9:30 p.m., the tenants abandoned the rental unit. On January 1, 2013 the landlord entered the rental unit and found the toilet was plugged, and everything was dirty. The male tenant came to the rental unit at about 6:00 p.m. that day and refused to return the key or pick up mattresses and a box spring, and he insisted on getting the security deposit back up front. The landlord stated that he changed the lock to the rental unit on January 3, 2013. The landlord has claimed the following monetary amounts:

- 1) \$14.55 for a new lock – the receipt for the lock is dated January 3, 2013
- 2) \$21 for wax seal and silicone to repair the toilet
- 3) \$99 for the landlord's labour for cleaning and repairs
- 4) \$66 for carpet cleaning
- 5) \$60 for loss of rent for January 1-4, 2013 – the landlord was unable to re-rent the unit until January 5, 2013 because he needed to do cleaning and repairs.

In support of his claim, the landlord submitted receipts for items purchased and work done, as well as photographs showing the dirty condition of the rental unit at the end of the tenancy.

### *Tenants' Response*

The female tenant stated that the tenants paid the landlord a security deposit of \$500. The tenant first stated that the male tenant \$500 for the security deposit and \$500 for the rent on July 1, 2012. The tenant later stated that before July 1, 2012 the male tenant paid the landlord \$200 toward the security deposit, and then the landlord came and collected a further \$300 from the female tenant for the balance of the security deposit.

The tenant stated that the landlord refused to do a move-out inspection at the end of the tenancy. The tenant acknowledged that they did not have the carpets cleaned and they did not clean everything. However, the tenant denied blocking the toilet and stated that there were no problems with the toilet during the tenancy. The tenant also disputed the landlord's claim for lost revenue, as it is the landlord's responsibility to re-rent the unit. The tenant stated that the key was returned to the landlord on January 1, 2013.

### Analysis

#### *Security Deposit*

I accept the landlord's evidence as credible that the security deposit was \$245. The tenant's testimony regarding the security deposit was contradictory, and the male tenant

did not appear as a witness to give direct testimony regarding the amount of the security deposit paid. In regard to the landlord's claim, however, when a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlord in this case did not carry out a move-in inspection or complete a move-in condition inspection report, he lost his right to claim the security deposit for damage to the property.

The landlord was therefore required to return the security deposit to the tenant within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing. The landlord received the tenant's forwarding address on January 6, 2013 but did not return the security deposit within 15 days of that date.

Because the landlord's right to claim against the security deposit for damage to the property was extinguished, and he failed to return the tenant's security deposit within 15 days of having received their forwarding address, section 38 of the Act requires that the landlord pay the tenant double the amount of the deposit. I therefore find that the landlord must pay the tenants \$490 for double recovery of the security deposit.

#### *Landlord's Claim for Damages*

I find that the landlord is entitled to his monetary claim in its entirety. The tenant acknowledged that they did not clean the carpets or everything else in the rental unit, and the landlord's photographs clearly show that the rental unit was not clean at the end of the tenancy. I accept the landlord's evidence that the toilet was plugged at the end of the tenancy. The tenant stated that there were no problems with the toilet during the tenancy, and I therefore find that any issues with the toilet at the end of the tenancy were caused by the tenants. I accept the evidence of the landlord that the tenants did not return the key on January 1, 2013, which necessitated the landlord's purchase of a new lock on January 3, 2013. When tenants do not clean the rental unit at the end of the tenancy and the landlord is required to clean, the tenants become responsible for any lost revenue for the time that the landlord could not re-rent the unit.

#### *Filing Fee*

As the landlord was only partially successful in his application, I find he is not entitled to recovery of the filing fee for the cost of his application.

Conclusion

The tenants are entitled to \$490. The landlord is entitled to \$260. I grant the tenants an order under section 67 for the balance due of \$230. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: April 16, 2013

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Residential Tenancy Branch

