



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MNR, MND, MNSD & MNDC

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on September 26, 2013. I find that the Application for Dispute Resolution filed by the Landlord was sufficiently served on the Tenant by mailing, by registered mail to where the Tenant resides on October 25, 2013. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to a monetary order and if so how much?
- d. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?

- e. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

On August 1, 2003 the tenant entered into a tenancy agreement with the then landlord and paid a security deposit of \$675. The rental property was sold to the present landlord with possession set for January 1, 2011. The tenancy ended on September 1, 2013 after the landlord gave the tenant a 2 month Notice to End Tenancy for landlord's use of the rental property.

The tenant testified she gave the landlord her forwarding address in writing on September 2, 2013.

The previous landlord did not conduct a condition inspection at the start of the tenancy. The present landlord did not conduct a condition inspection with the tenant or prepare a condition inspection report when she purchased the property or at the end of the tenancy.

### Tenant's Claim:

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

### Analysis

The tenants paid a security deposit of \$675 on August 1, 2003. The interest on security deposit as determined by the Residential Tenancy Act Regulations is \$23.91 for a total

of \$698.91. I determined the tenancy ended on September 1, 2013. I further determined the tenant provided the landlord with her forwarding address in writing on September 2, 2013. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenant and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. As a result I determined the tenant has established a claim against the landlord for double the security deposit plus the interest or the sum of \$1373.91 ( $\$675 \times 2 = \$1350 + \$23.91 = \$1373.91$ ). The Act does not permit the doubling of the interest.

**In summary I determined the tenant has established a claim against the landlord in the sum of \$1373.91 plus the \$50 filing fee for a total of \$1423.91.**

Landlord's Claim:

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

The evidence presented by the landlord is lacking for the following reasons:

- The landlord did not complete a condition inspection report at the start or the end of the tenancy.
- The landlord failed to provide evidence as to the condition of the rental property at the start of the tenancy in August 2003.

- The tenant submits much of the alleged damage pre-existed her tenancy starting in August 2003 or was reasonable wear and tear. The landlord failed to provide evidence to refute the testimony of the tenant.
- The landlord bases her claim on photographs which are not very clear and a quotation from a contractor. The contractor did not testify at the hearing. It has been more than two months since the end of the tenancy and the landlord was very imprecise as what work was completed and the value of that work.
- The claims of the landlord do give credit for depreciation.
- Many of the claims made by the landlord are excessive and not supported by the evidence.

#### Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. The landlord claimed the sum of \$400 for the cost of fixing holes on wall and touch-up painted in master room, other bedrooms, living room and bathrooms. The present landlord has not painted the rental property since it was purchased in 2011. The tenant has painted the rental property on two occasions at her own expense prior to that time. Policy Guideline 40 provides that the expected life on an interior paint job is 4 years. I determined the tenant is not responsible for the painting as it has fully depreciated. However, the tenant acknowledged responsible for two holes in the bathroom which were used as shelves. She estimated the reasonable cost to make those repairs are between \$50 and \$100. I determined the landlord is entitled to \$100 of this claim. The balance of this claim is dismissed.
- b. I dismissed the landlord claim of \$300 for the cost of fixing drywall corners and touch up paint in master room and living rooms as the landlord failed to prove that the damage was caused by the tenant and is more than reasonable wear and tear.

- c. I dismissed the landlord's claim in the sum of \$150 for the cost of fixing window drywall corners in bathrooms and kitchen as the landlord failed to prove this damage was caused by the tenant.
- d. I dismissed the claim of \$50 for the cost of replacing heater covers in the master bedroom and other bedrooms as the landlord failed to prove the damage was caused by the tenant.
- e. I dismissed the landlord's claim of \$500 for the cost of cleaning the dirty carpet. I accept the evidence of the tenant that she shampooed the carpet a short time before she left. The carpet was present when the tenant took possession of the rental property and may very well be the original carpet for the rental property which is 25 to 30 years old. Policy Guideline #40 provides that the useful life of an interior carpet is 10 years. The carpet in this case has been fully depreciated.
- f. I dismissed the landlord's claim of \$500 for the cost of replacing closet doors and hinges in the master bedroom and other bedrooms as these doors were damaged prior to the start of the tenancy.
- g. I dismissed the landlord's claim of \$600 for the cost of replacing kitchen cabinet hinges, broken board, drawer track and drawer face cover as the landlord failed to prove these items were damaged by the tenant.

**In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$100 plus the \$50 filing fee for a total of \$150.**

Conclusion

**The tenant has established a claim against the landlord in the sum of \$1423.91. The landlord has established a claim against the tenant in the sum of \$150. After setting off one claim against that of the other I ordered that the landlord pay to the Tenant the sum of \$1273.91**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: November 07, 2013

---

Residential Tenancy Branch

