



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Remax Little Oak Realty Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

MNSD, MND, FF

This hearing dealt with cross applications. The landlord is seeking an order to retain the pet deposit. The tenants have filed an application seeking the return of double the pet deposit. Both parties confirmed that they received each other's Notice of Hearing letter, Application for Dispute Resolution and evidence. I am satisfied that the parties have exchanged said documents in accordance with the service provisions of the Act and the Rules of Procedure. Both parties gave affirmed evidence.

### **Issue to be Decided**

Is either party entitled to a monetary order as claimed?

### **Background, Evidence**

The landlord's testimony is as follows. The tenancy began on April 1, 2012 and ended on October 31, 2014. The tenants were obligated to pay \$1500.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$750.00 security deposit and a \$500.00 pet deposit. A written condition inspection report was conducted at move in but not at move out. The landlord stated that he is seeking to retain the pet deposit as the tenant left the unit dirty and not suitable for the next tenants. The landlord stated that he is seeking \$165.00 for carpet cleaning, \$110.00 for garage and yard cleaning, \$160.00 for duct cleaning to remove the pet hair, and \$65.00 for kitchen cleaning. The landlord stated that the tenants only provided their forwarding address in writing on November 6, 2014.

The tenants' testimony is as follows. The tenants stated that the end of the tenancy was on September 30, 2014. The tenants stated that they gave the landlord their forwarding address by e-mail on October 28, 2014 and then dropped off a hand written letter with their forwarding address to the landlords' office on November 6, 2014. The tenants stated that they returned the home in substantially better condition than they received it. The tenants were willing to clean the carpets but were told by the landlord that due to the age of the carpets they would be tearing them out and not to bother. The tenants stated that at the move out inspection, the landlord told them that "everything looks good and you can expect the return of your full deposit". The tenants stated that only the security deposit was returned, but not the pet deposit. The tenants stated that they are seeking the return of double the pet deposit and the \$17.90 for the cost of the USB stick to provide digital evidence for this hearing.

### Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

Firstly, I deal with the landlords' application as follows. The landlord gave testimony that he "forgot" to bring the condition inspection report with him at move out. The landlord gave further testimony that several days later he felt the unit was not as clean as it should have been and decided to hold onto the pet deposit. The landlord submitted some photos however they were poor in quality and not helpful. The landlord was seeking the costs for cleaning the carpet; however he did not have the carpets cleaned as they were old and were replaced with laminate flooring.

Section 35 of the Act states a tenant and landlord must conduct the inspection in writing together at move out on the day the tenancy ends or on another mutually agreed upon day. I accept the tenants' testimony that he was told that the unit was fine and that was the end of it. The landlord cannot go back several days later and then unilaterally decide to conduct an inspection and deduct a deposit without the tenants being present or without their consent.

Based on the poor quality of the photos, the lack of a condition inspection report at move out and the disputing evidence of the tenants testimony and digital evidence, the landlord has failed to provide sufficient evidence to support his claim and I therefore must dismiss his application.

I now deal with the tenants' application as follows. The tenants are seeking \$17.90 for the cost of a USB stick to submit digital evidence. The Act does not prescribe for the costs incurred when litigating one's claim accordingly; I dismiss this portion of the tenants' application.

Section 39 of the Act clearly states that a tenant must provide their forwarding address in writing. The tenants stated that they e-mailed it to the landlord on October 28, 2014 and then dropped off a hand written letter on November 6, 2014. The tenants stated that the landlord did not respond to the e-mail. The landlord stated that he did not receive the e-mail but did receive the letter on November 6, 2014 and then filed for dispute resolution on November 14, 2014.

The tenants are seeking the return of double the pet deposit. Section 38 of the Act addresses this issue as follows

### **Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

As the landlord has filed his application within the 15 day time limit the doubling provision does not apply, however the tenants are entitled to the return of the original \$500.00 pet deposit.

The tenants are also entitled to the return of the \$50.00 filing fee.

### Conclusion

The tenants have established a claim for \$550.00. I grant the tenant an order under section 67 for the balance due of \$550.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlords' application is dismissed.

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 30, 2015

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Residential Tenancy Branch

