



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND, MNSD, 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 parties participated in the conference call hearing.

### Issues(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began on April 1, 2009 at which time a \$300.00 security deposit was paid. The parties further agreed that the tenancy ended on September 30, 2009.

The landlord's testimony is as follows. The landlord observed the tenant moving out on September 29 and believes that she did not return to the rental unit after that date. On September 30 the landlord found the door to the rental unit unlocked and when he entered, he found the keys to the unit on the kitchen counter. The landlord submitted photographs which he claims were taken on September 30 which show a significant amount of garbage on the floor of the kitchen, items on the counter, in the living room and stacked outside the unit. The landlord testified that the sink in the bathroom leaked and he had to have it repaired and that the burners on the stove did not fit properly and had to be replaced. The landlord provided a copy of a receipt dated November 13, 2009 which he claims is evidence that the leak in the bathroom sink was repaired. The

landlord did not submit a receipt showing that the burners were replaced. The landlord claimed that a window screen was damaged by the tenant. The landlord testified that the rental unit was completely unclean and that he and his family spent a considerable amount of time cleaning the unit. The landlord further testified that he incurred some cost removing the items abandoned by the tenant. The landlord believed that his daughter may have conducted a condition inspection at the beginning of the tenancy, but did not have a copy of that report. The landlord acknowledged that a condition inspection report was not completed at the end of the tenancy and testified that he attempted to telephone the tenant on October in order to schedule an inspection but was unable to contact her.

The tenant's testimony is as follows. The tenant thoroughly cleaned and emptied the rental unit but acknowledged that she left a number of things outside the unit. The tenant confirmed that some of the photographs showing items outside the rental unit accurately reflected what was left behind. The tenant denied that there were any leaks in the bathroom and further denied that she changed the burners on the stove. The tenant testified that the window screen was damaged at the time she moved in and that she recalls it having been noted on the condition inspection report, but testified that she was never given a copy of that report.

### Analysis

The tenant made an argument that the landlord had extinguished his claim against the security deposit by failing to conduct a condition inspection at the end of the tenancy. I find that the landlord has indeed extinguished his claim as he was required to give the tenant two opportunities to schedule a condition inspection and failed to do so. The Act requires that a landlord give a tenant a notice of final opportunity in a form prescribed by the Act and I find that the landlord failed to do this. Section 36(2) operates to extinguish the landlord's claim against the security deposit. Although I have found that the landlord extinguished his claim against the security deposit, he is not prevented from making a monetary claim against the tenant.

I have spent considerable time examining the photographs by the landlord and I have found them unhelpful in establishing the condition of the rental unit at the end of the tenancy. It is apparent that items in the rental unit have been moved about, some of the items having been photographed at different locations. In particular, the kitchen photographs vary widely, with bags of garbage on a kitchen chair in one photograph and then noticeably absent in other photographs, a blue garbage bag open on the floor in two photographs but absent in a third and items which were on the counter in one photograph appearing on the floor in another. The photographs do show that aside from the garbage on the floor, the kitchen floor appeared remarkably clean as did the countertops and the stove and oven. In light of the inconsistency of the photographs and the questions they raise, I prefer the evidence of the tenant to that of the landlord and find that the tenant did not leave items inside the rental unit and that she cleaned the rental unit at the end of the tenancy. The one exception is the refrigerator, which I find to have been left uncleaned or inadequately cleaned. As the tenant has acknowledged that some of the photographs of the outside of the rental unit accurately depict what was left behind, I find that that the landlord is entitled to recover the cost of removing those items. I find that an award of \$50.00 will adequately compensate the landlord for the time and labour to remove the items abandoned by the tenant and the time and labour spent cleaning the refrigerator. I find that the landlord has failed to prove that the alleged leak in the bathroom sink was due to anything other than reasonable wear and tear and dismiss the claim for the cost of repairing that leak. I do not accept that the burners in the oven had to be replaced, particularly as no evidence as to the cost of replacement was provided. I do not accept that the window screen was damaged by the tenant as the landlord did not provide a copy of the move-in inspection report to show that the window screen was in good condition at the beginning of the tenancy.

The landlord also applied to recover the \$50.00 filing fee paid to bring his application. As the landlord has been substantially unsuccessful in his application I find that he must bear the cost of the filing fee.

I have awarded the landlord \$50.00. Despite having extinguished his claim against the security deposit, I note that section 72 of the Act permits me to deduct the amount awarded from the security deposit and I find it expedient to do so in these circumstances. I order that the landlord retain \$50.00 from the security deposit in full satisfaction of his claim and I order the landlord to return the balance of \$250.00 to the tenant forthwith. I grant the tenant a monetary order under section 67 for \$250.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord is awarded \$50.00 which he will retain from the security deposit. The landlord is ordered to return the balance of \$250.00 to the tenant.

Dated: January 14, 2010

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