



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MND, MNSD, MNDC

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for damage or loss under the *Residential Tenancy Act (Act)*; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on September 21, 2009 for a 1 year fixed term tenancy beginning on October 1, 2009 with a monthly rent of \$1,000.00 and security deposit of \$500.00 was paid on September 22, 2009. The tenancy agreement has a liquidated damages clause that stipulates that should the tenant end the tenancy prior to the end of the fixed term the tenant must pay the landlord \$325.00 for administrative costs;
- A copy of the tenant's notice to end the tenancy effective April 30, 2010;
- A copy a Condition Inspection Report that shows the condition of the rental unit at the start of the tenancy and only one comment regarding the end of the tenancy that states "Apartment left dirty, items left at dumpster (1 sofa & a few smaller items)";
- An invoice for painting the unit at a cost of \$210.00 for 14 hours of prepping and painting;
- An invoice for cleaning the unit at a cost of \$150.00 for 12.5 hours of cleaning;
- An invoice for installation of a new mailbox lock and key for \$10.00; and
- An invoice for removal of a chesterfield, wood, mattress, chair and computer monitor.

The landlord could not explain why the condition inspection report was incomplete regarding the move out condition, but testified that they did hire a cleaner to clean the rental unit at the end of the tenancy. The landlord could also not confirm how it was determined that the items that were found by the dumpster belonged to this tenant.

The tenant testified that when he signed the tenancy agreement he had been told by the landlord's agent (one who is no longer with the company) that it was merely a formality and that it was not a lease. The tenant provided no corroborating evidence or testimony from the agent.

The tenant acknowledged that not everything was cleaned in the unit when they left but primarily it was only behind appliances; windows, tracks and sills and baseboard heaters that had not been cleaned.

The tenant also acknowledged that he had placed a broken bed frame, that had been broken down to smaller parts into the dumpster and that he had also left a mattress at the dumpster, he had not left anything else there.

The landlord's total claim is as follows:

Description	Amount
Lease Break Fee	\$300.00
Cleaning	\$150.00
Lock & Key	\$10.00
Hauling	\$94.50
<b>Total</b>	<b>\$554.50</b>

### Analysis

At the start of the hearing the tenant acknowledged that he did not dispute the \$10.00 for changing the lock and key for the mailbox.

Based on the submitted tenancy agreement I find the landlord did indicate the term of the tenancy was fixed for 1 year due to end on September 30, 2010 and as a result of the tenant ending the tenancy prior to the that date the tenant had agreed to pay liquidated damages.

Despite the landlord's ability to claim \$325.00 I accept the landlord's claim of \$300.00 and find the tenant responsible to pay this amount to the landlord.

In relation to the hauling charges, as the landlord could not provide evidence to show how they had determined the items left at the dumpster belonged to the tenant I accept the tenant's testimony that he had only put a mattress and broken up bed frame into the dumpster area.

As a result, I find the tenant cannot be held responsible for the entire costs of hauling these items away. I accept, as reasonable, the landlord's testimony that he would have been charged a minimum of \$50.00 to remove the items the tenant acknowledged. I find the tenant is responsible for this amount.

As the landlord has failed to provide any documentary evidence as to the condition of the rental unit with any specificity, I find the landlord has failed to establish the rental unit required any cleaning. Having said this, the tenant did acknowledge some deficiencies in his efforts to clean the unit. I find the amount of \$50.00 to be reasonable compensation to the landlord for the cleaning that would have been required based on the tenant's testimony.

### Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$460.00** comprised of \$300.00 liquidated damages; \$10.00 for key/lock replacement; \$50.00 cleaning; \$50.00 hauling and the \$50.00 fee paid by the landlord for this application. I order the landlord may deduct the security deposit and interest held in the amount of \$500.00 in I satisfaction of this claim.

As this leaves a balance of \$40.00 owed to the tenants for their security deposit I grant a monetary order to the tenants in the amount of **\$40.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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: September 28, 2010.

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Dispute Resolution Officer