



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes                      MND, MNR, MNSD, MNDC, FF

### Introduction

This matter dealt with an application by the landlord to obtain a Monetary Order to recover unpaid rent, a Monetary Order for damage to the rental unit, a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent by registered mail to the tenant on June 30, 2010. The hearing commenced on November 16, 2010 and was adjourned to allow the landlord time to receive the tenants' evidence package. The hearing was reconvened to today's date.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for:
  1. Unpaid rent?
  2. Damage to the rental unit?
  3. Money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security deposit?



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## Background and Evidence

Both parties agree that this tenancy started on September 01, 2009 and ended on May 31, 2010. Rent for this unit was \$900.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$450.00 on August 14, 2009. This started as a fixed term tenancy which expired on April 30, 2010 and then reverted to a month to month tenancy for the final month. The tenant gave the landlord her forwarding address in writing on June 21, 2010.

The landlord testifies that the tenancy agreement states if a tenant has guests for a period longer than four weeks that an additional charge of \$100.00 per month will be made. The landlord states the tenants' boyfriend stayed at the rental unit since November, 2009 to March, 2010 without the tenant informing her or paying this additional rent charge. The landlord states she went overseas from mid November, 2009 and returned mid April, 2010. She states that during that time she had reports that the tenants' boyfriends' car was always parked at the rental unit. The tenants residing upstairs and a neighbour, whom the landlord had asked to keep an eye on her property, informed the landlord that the tenants' boyfriends' car was also there after work and left in the morning. She also states the upstairs tenant told her that the tenants' boyfriend was staying there as they used the shared laundry facilities. The landlord states the tenant brought a number of boxes to the unit which she stored under the deck. She states this also shows that another person occupied the rental unit as these boxes indicate that someone else had moved in.

The landlord testifies that on her return to the rental unit in April, 2010 the tenant approached her and said her boyfriend had moved into her rental unit with her on April 01, 2010 and the tenant did pay the additional rent charges for April and May, 2010. The landlord seeks to recover the sum of \$500.00 from the tenant for this additional occupant in her rental unit from November, 2009 to March, 2010. The landlord also seeks to recover interest on the outstanding rent.

The tenant disputes the landlords' claims. The tenant testifies that her boyfriend rented his own unit elsewhere and although he did stay at her unit with her he was never there for four weeks in

any month and has provided a letter from her boyfriends' landlord who states the tenants' boyfriend stayed in his own rental unit for a minimum of one week every month. The tenant also states that during this time period of November to March her boyfriend went back to his parents' home in Ontario from December 20, 2009 until January 04, 2010 and has provided a letter from her boyfriend's father attesting to this. Further to this the tenant has provided a letter from a Party who states the tenant and her boyfriend house sat for her from March 19, 2010 until March 28, 2010.

The tenant states that these facts show that her boyfriend did not live with her at her rental unit until April 01, 2010. The tenant states she would sometimes car share with her boyfriend and that is why his car was often at her unit and the boxes stored under the deck came from her storage unit which she had given up in order to sort out her belongings in preparation for a house purchase. The tenant states that at no time during her e-mail correspondence with the landlord did the landlord raise any concerns about another person living at the tenants unit.

The landlord testifies that the tenant gave Notice to end the tenancy and a scheduled inspection took place of the rental unit. The landlord states there were marks left on the walls and the cupboards and toilet had not been cleaned sufficiently. The stove top was not cleaned and the top of the oven lining was not clean. The tenant came back and cleaned the unit again but the landlord still found the stove top and the top of the oven was not clean properly. The landlord states she had to spend four hours cleaning the stove top and the oven and seeks to recover the sum of \$100.00 for this work.

The tenant testifies that she did clean the unit but the landlord was unhappy about how she had done this. She agrees that she did go back after the move out condition inspection and cleaned areas of the unit again. The tenant states the stove top was cleaned to a standard acceptable to the Act and anything else is reasonable wear and tear. The tenant does agree that she missed cleaning the top lining of the oven as the oven light was broken she could not see and inadvertently missed this area. The tenant agrees the landlord may keep the sum of \$25.00 from her security deposit for having to do this work. The tenant has provided photographs of the rental unit at the end of her tenancy.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the landlords claim for unpaid rent; in this matter, the landlord has the burden of proof and must show that the tenant was in breach of the tenancy agreement by allowing another occupant to reside at the rental unit for consecutive periods longer than four weeks. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The landlord has provided letters from another tenant and a neighbor stating the presence of the tenants' boyfriends' car at the property while the landlord was overseas and the tenant has provided letters from parties detailing periods of time the tenants' boyfriend was residing with them or at his own rental unit. Therefore, in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that the tenants' boyfriend resided at her rental unit with her for periods exceeding four weeks as stipulated in the addendum to the tenancy agreement. Consequently, the landlord has not met the burden of proof in this matter and her application for a Monetary Order to recover unpaid rent and interest is dismissed.

With regards to the landlords application for a Monetary Order for damage to the rental unit; Section 32 of the *Act* states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. The photographic evidence the tenant has provided show that the stove top was cleaned to a reasonable standard and a landlord cannot expect a tenant to return a stove in an "as new" condition at the end of a tenancy. The tenant does agree however that she failed to clean the oven thoroughly and as such agrees the landlord may keep \$25.00 from her security deposit. As the landlord spent four hours cleaning the oven and stove top it is my decision that the landlord is entitled to recover the sum of **\$50.00** from the tenant for her time taken in cleaning the oven. Consequently, the remainder of the landlords' application for cleaning costs is dismissed.

With regard to the landlords application to keep the tenants security deposit; it is my decision that the landlord may deduct \$50.00 from the tenants' security deposit for her cleaning costs.



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As the landlord has been largely unsuccessful with her claim I find she must bear the cost of filing her own application.

## Conclusion

The landlords' application has been largely unsuccessful. The landlord may retain **\$50.00** from the tenants' security deposit and the balance of **\$400.00** must be returned to the tenant within **seven days** of receiving this decision..

The remainder of the landlords' application is dismissed without leave to reapply.

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: January 10, 2011.

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Residential Tenancy Branch