



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MND, MNR, MNDC, MNSD, FF.

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for the cost of repairs, unpaid rent, loss of income, replacement of an appliance and the filing fee. The tenant applied for the return of double the security deposit and the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order to recover the cost of repairs, appliances, unpaid rent and the filing fee? Did the tenant provide the landlord with his forwarding address in writing? Is the tenant entitled to the return of double his security deposit and the filing fee?

Background and Evidence

The tenancy started on February 01, 2005. In June 2010, the landlord served the tenant with a notice to end tenancy for landlord use of property with an effective date of November 30, 2010. The tenant moved out on November 30, 2010. The rent was \$877.20 due on the first day of each month. Prior to moving in, the tenant paid a security deposit of \$375.00.

The tenant gave the landlord his forwarding address in writing on December 01, 2010 with a request for the return of his security deposit. The landlord filed this application on December 10, 2010, but did not serve the tenant with a notice of hearing until end of March 2011. The tenant had not heard back from the landlord and on February 17, 2011, he filed an application for the return of double his security deposit.

Move in and move out inspections were conducted and both parties filed copies of the reports. The landlord stated that the home was approximately 30 years old but about 18 years ago the entire home was renovated. The walls were painted just before the tenant moved in.

The landlord specifically stated that the doors were also painted, but later on during the hearing, upon going through the inspection report, he agreed that they were not painted just prior to the tenant moving in.

The landlord stated that the tenant had some belongings left in the unit on December 01, 2010 and has provided photographs to support his testimony. The tenant agreed that he had some belongings left behind, but he removed them on December 01, 2010. The landlord stated that the tenant left behind bags of garbage on the patio and carport. The tenant argued that he removed all garbage bags. The landlord also stated that the tenant did considerable damage to the stove and it had to be replaced. In addition, the counter tops adjacent to both sides of the stove were burnt and had to be replaced. The landlord also stated that the tenant left the unit in a dirty condition which required several hours of cleaning. The tenant agreed that he had not thoroughly cleaned the refrigerator and the kitchen cabinets. The landlord filed photographs to support his testimony.

The landlord stated that the tenant was negligent in his use of the shower which resulted in water leaking into the basement. There was a huge water stain on the ceiling. The landlord wrote a letter to the tenant regarding this damage in November 2010 – the month that tenant moved out. The landlord is claiming \$1,400.00 to repair the ceiling. The landlord did not file any invoices to support his claim.

The landlord is claiming the following:

1.	Rent for November 2010	\$877.20
2.	Loss of income for December 2010	\$877.20
3.	Replacement of stove	\$446.88
4.	Replacement of 2 kitchen cabinets \$285.00 each	\$570.00
5.	Removal and disposal of stove	\$58.00
6.	Removal and disposal of kitchen cabinets	\$68.00
7.	Installation of kitchen cabinets	\$200.00
8.	Cleaning Refrigerator (\$54) Kitchen cabinets (\$140) Carpets (\$195)	\$389.00
9.	Replace Kitchen linoleum	\$385.00
10.	Cleaning and removal of garbage from Patio (\$45) and carport (\$25)	\$70.00
11.	Repair and paint door	\$250.00
12.	Repair ceiling in basement	\$1,400.00
	Total	\$5,591.28

Analysis

Landlord's application:

1. Rent for November 2010 - \$877.20

Pursuant to section 51 (1) of the *Residential Tenancy Act*, a tenant who receives a notice under section 49 (*Landlord's use of property*) is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In this case the landlord served the tenant with a notice to end tenancy under section 49, and therefore must give the tenant the equivalent of one month's rent. Accordingly, the tenant did not pay rent for the last month of the tenancy and therefore the landlord is not entitled to his claim.

2. Loss of income for December 2010 - \$877.20

The landlord stated that he had no intentions of re-renting the unit and as of the date of the hearing, the unit was vacant. Therefore even though the tenant removed the balance of his belongings (mostly small decorative items) on December 01, 2010, the landlord did not suffer any loss of income and is therefore not entitled to his claim of \$877.20 for December 2010.

3. Replacement of stove - \$446.88

The landlord stated that the stove was left in such a bad condition that it had to be replaced. The tenant stated that the stove had problems through the tenancy and upon informing the landlord; he would promise to fix it but never did. The tenant filed two receipts for parts that he replaced on the stove. The landlord also stated that he replaced parts on the stove. The landlord stated that the stove was approximately 11 years old.

Based on the testimony of both parties, I find that the stove was problematic and because it was 11 years old, would have to be replaced in any event. Therefore, the landlord must bear the cost of replacing the stove.

4. Replacement of two kitchen cabinets - \$570.00

The landlord filed photographs that depict the damage to the cabinets on either side of the stove. The landlord has also filed a receipt for the purchase of two cabinets for a total of \$246.40.

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the cabinets. As per this policy, the useful life of cabinets is 25 years. The landlord stated that the house was renovated 18 years ago and therefore by the end of the tenancy, the cabinets had seven years of useful life left. Accordingly, I find that the landlord is entitled to \$68.95 which is the prorated value of the remainder of the useful life of the cabinets.

5. Removal and disposal of stove - \$58.00

The landlord has not established a claim for the replacement of the stove. Therefore he is responsible for its removal and disposal. Accordingly his claim for \$58.00 is dismissed.

6. Removal and disposal of kitchen cabinets - \$68.00

The landlord has not filed a receipt for this service. He stated that he removed and disposed of them himself. Based on the landlord's entitlement to the prorated cost of the cabinets, I find that the landlord is also entitled to the prorated cost of removal and disposal of the cabinets in the amount of \$19.04.

7. Installation of kitchen cabinets - \$200.00

Based on the landlord's entitlement to a prorated cost of cabinets, I find that the landlord is entitled to a prorated cost of installation in the amount of \$56.00.

8. Cleaning: Refrigerator - \$54.00, Kitchen cabinets - \$140.00 and Carpets - \$195.00

The landlord did not file any invoices to support his monetary claim. The tenant agreed that he had not thoroughly cleaned the refrigerator and the kitchen cabinets. Therefore I find that the landlord is entitled to the cost of cleaning these items. The tenant stated that he cleaned the carpets and referred to the move in inspection report that states that the carpet is old and stained. I find that the tenant cleaned the carpet and left it in the condition that it was at the start of the tenancy. Therefore the landlord is not entitled to the cost of cleaning the carpet. Overall the landlord has established a claim in the amount of \$194.00 for cleaning.

9. Replace kitchen linoleum - \$385.00

The landlord did not provide any evidence to support his claim. Pursuant to Section 37 of the *Residential Tenancy Policy Guideline* the useful life of flooring is ten years.

The landlord renovated the rental unit in 18 years ago and therefore by the end of the tenancy, the flooring had outlived its useful life. Accordingly, the landlord's claim for \$385.00 to replace the kitchen linoleum is dismissed.

10. Cleaning and removal of garbage from patio - \$45.00 and carport - \$25.00

The tenant stated that he did not leave garbage bags on the patio or in the carport. The landlord filed photographs taken in June and July of 2010 that show garbage strewn on the driveway. The landlord has not filed any receipts to support his claim – therefore I find that the landlord is not entitled to his claim of a total of \$70.00 for the removal of garbage.

11. Repair and paint door - \$250.00

As per the move in inspection report, the interior doors were not painted and some were damaged. The landlord has not filed an invoice for this cost and therefore his claim for \$250.00 is dismissed.

12. Repair ceiling in basement - \$1,400.00

The landlord stated that water leaked to the basement due to negligence on the part of the tenant. The tenant stated that the bathroom in his rental unit was damaged and in need of repair from the start of tenancy as indicated in the move in inspection report. The tenant stated that the landlord did not repair the damage which resulted in water leaking below to the basement and staining the ceiling.

Section 32 of the *Residential Tenancy Act*, states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. I find that the landlord was responsible for fixing the damage in the bathroom which if carried out in a timely manner would have prevented in a leak into the basement. The landlord did not file any invoices to support his claim of \$1,400.00. I find that the landlord has not proven his claim and accordingly is dismissed.

Tenant's Application:

The tenant provided his forwarding address to the landlord in writing. The landlord was compliant with Section 38 of the *Residential Tenancy Act*, by applying to retain the security deposit within 15 days of the end of the tenancy. Therefore the tenant is not entitled to double the return of the security deposit. However, the landlord did not notify the tenant of his application until the end of March 2011. The tenant filed an application on February 17, 2010 as he had not heard from the landlord.

I find that had the landlord notified the tenant of his application, in a timely manner, the tenant would not have made his own application. Therefore I find that the landlord must bear the cost that the tenant incurred to file his application in the amount of \$50.00. I also find that the tenant is entitled to the return of the base amount of the security deposit.

Overall the landlord has established a claim as follows:

4.	Replacement of 2 kitchen cabinets \$285.00 each	\$68.95
6.	Removal and disposal of kitchen cabinets	\$19.04
7.	Installation of kitchen cabinets	\$56.00
8.	Cleaning Refrigerator (\$54) Kitchen cabinets (\$140) Carpets (\$195)	\$194.00
	Total	\$337.99

The landlord has established a claim of \$337.99. Since he has established a small portion of his claim, he must bear the cost of filing his application.

The tenant has established a claim of the return of his security deposit of \$375.00 plus \$13.28 for accrued interest. As explained above, the tenant is also entitled to the recovery of his filing fee of \$50.00. Overall the tenant has established a claim of \$438.28.

I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$60.29. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of \$60.29. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$60.29**.

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: April 18, 2011.

Residential Tenancy Branch