



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:11 a.m. in order to enable him to connect with this 11:00 a.m. hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord submitted oral and written evidence that the landlord sent a copy of the landlord's dispute resolution hearing package to the tenant by registered mail on September 16, 2011. The landlord provided a copy of the Canada Post Tracking Number and Customer Receipt to confirm this mailing. I am satisfied that the landlord served this package to the tenant in accordance with the *Act*.

The landlord amended the application for a monetary award to remove two of the fees claimed in the original application. She said that the strata council had not charged the landlord for a \$75.00 strata fine, nor had the strata charged the landlord \$150.00 for failing to book the elevator when the tenant moved. Consequently, she reduced the amount of the landlord's requested monetary award from \$1,404.04 to \$1,179.04.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The tenant moved into this rental unit on the basis of a one-year fixed term tenancy agreement that commenced on July 1, 2009. At the expiration of the first year of that tenancy, the parties signed a new one-year fixed term tenancy agreement commencing on July 1, 2010 that was to expire on June 30, 2011. At the end of this tenancy, the tenant remained in the rental unit until August 31, 2011, on the basis of a periodic tenancy. Monthly rent throughout this tenancy was set at \$1,875.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$937.50 security deposit paid on June 12, 2009.

The landlord entered into written evidence a copy of the July 7, 2009 joint move-in condition inspection report. The landlord also provided copies of emails sent to the tenant requesting a joint move-out condition inspection on August 31, 2011, at which time the landlord was planning to take possession of the rental unit. The tenant did not attend this inspection and left the keys to the rental unit with a neighbour. The landlord entered into written evidence a copy of the landlord's report of the landlord's August 31, 2011 move-out condition inspection forwarded to the tenant.

The landlord's amended application for a monetary award of \$1,179.04 was for damage arising out of this tenancy. The landlord also applied for permission to recover the landlord's \$50.00 filing fee from the tenant and to retain the tenant's security deposit in partial satisfaction of the monetary award requested. The application for a monetary award was based on the landlord's claim for damage to the following items:

| Item                                  | Amount            |
|---------------------------------------|-------------------|
| Replacement of Broken Glass Cooktop   | \$552.44          |
| Cleaning                              | 476.60            |
| Move Out Fee                          | 150.00            |
| <b>Total Monetary Award Requested</b> | <b>\$1,179.04</b> |

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage

and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Based on the landlord's written and photographic evidence, I am satisfied that the landlord has demonstrated that the tenant did not leave the rental unit reasonably clean and undamaged as required by section 37(2)(a) of the *Act*. I also accept that the landlord has provided receipts to support the landlord's claim for a monetary award of \$552.44 to replace the broken glass cooktop in the kitchen. I allow a monetary award in that amount in the landlord's favour.

Although the amount claimed in the landlord's application for dispute resolution identified \$476.60 for cleaning, my review of the landlord's receipts produces a different amount of entitlement to the landlord. The landlord provided a receipt from a renovation company for \$575.00 plus 12% for HST. However, the landlord noted that one of the items included in this receipt was for a \$135.00 repair to the bathroom sink that the landlord stated was not the tenant's responsibility. This deduction plus the HST charge should be deducted from the \$644.00 total charge by the renovation company. I find that the correct charge for cleaning, steam cleaning the carpets and taking out and disposing of garbage left behind by the tenant should have been \$440.00 plus 12% for HST, a total of \$492.80. I allow the landlord a monetary award of \$492.80 for cleaning required after the tenant vacated the rental unit.

As noted at the hearing, the landlord has not provided written evidence that the landlord was in fact charged a \$150.00 move out fee by the strata council or paid that amount. This amount is not specified in the tenant's residential tenancy agreement. I dismiss the landlord's application for the \$150.00 move out fee without leave to reapply as the landlord has not provided sufficient evidence to demonstrate that the landlord incurred this cost.

As the landlord has been successful in this application, I allow the landlord to recover the filing fee for this application from the tenant. I allow the landlord to retain the tenant's security deposit plus allowable interest in partial satisfaction of the monetary award issued in the landlord's favour. No interest is payable over this period.

### Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover for damage arising out of this tenancy and for the landlord's filing fee, and to retain the tenant's security deposit.

| Item                                | Amount          |
|-------------------------------------|-----------------|
| Replacement of Broken Glass Cooktop | \$552.44        |
| Cleaning                            | 492.80          |
| Less Security Deposit               | -937.50         |
| Filing Fee for Application          | 50.00           |
| <b>Total Monetary Order</b>         | <b>\$157.74</b> |

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: December 02, 2011

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Residential Tenancy Branch