



# 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 was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit – Section 67;
2. An Order to retain all or part of the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy began on October 1, 2009 and ended on March 31, 2012. Rent in the amount of \$700.00 was payable monthly. The Landlord states that at the onset of the tenancy the Landlord credited the Tenant \$175.00 for the security deposit in exchange for cleaning and carpet removal at the unit. The Tenant states that the Landlord took \$175.00 cash for the security deposit and credited the remaining \$175.00 for the work done in the unit. It is noted that the tenancy agreement appears to note a paid credit of \$175.00 for cleaning. A move-in inspection was conducted between the Parties at the onset of the tenancy and an agent for the Tenant attended the move out inspection on April 2, 2012.

The Landlord states that the Tenant left the unit with damage to the weather stripping, a closet door and a dryer door handle. The Landlord states that as a contractor with several rental units, the Landlord has replacement materials on hand and used those materials to replace the weather stripping and closet door. The Landlord states that the dryer that was damaged was twenty or thirty years old and that the Landlord replaced this dryer with another dryer that he had on hand that was also possibly twenty years old. The Landlord states that he does not know the exact age of the appliances. The Landlord claims \$82.50 for supplies and labour to install the weather stripping, \$175.00 for replacement of the closet door and \$185.00 for the cost to replace the dryer. It is noted that no supporting materials were provided for the costs claimed and the photos provided by the Landlord do not provide any clarity.

The Tenant states that the weather stripping was not new at move in and that the damage to the weather stripping was normal wear and tear. The Tenant states that the closet door was old and was damaged when a person leaned on it. The Tenant states that the door was repaired by the Tenant but that the paint used was a different color than the previous color. The Tenant states that the dryer was very old and did not clean the clothes properly and that the dryer door was plastic and broke just by opening the door.

### Analysis

Section 37 of the Act provides that when a tenancy vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party and that costs for the damage or loss have been incurred or established. Given the lack of supporting evidence in relation to the costs and noting that no clear photos were provided of the damages or the repairs, I find that the Landlord has failed to

substantiate on a balance of probabilities the costs being claimed. I therefore dismiss the Landlord's application.

"Contra Proferentem" is a rule used when interpreting contracts. In plain English it means that if there is an ambiguous clause in a contract it will be interpreted to favor the party who did not draft the term because that party is not responsible for the ambiguity and should therefore not be made to suffer for it. In making a determination of the amount taken as a security deposit, I find that the notation on the tenancy agreement is ambiguous in that it could be taken to confirm either the Landlord's oral evidence or the Tenant's oral evidence. As a result, I find in favour of the Tenant's evidence that the Landlord collected \$175.00 in cash and provided a credit of \$175.00 for work completed on the unit at move-in. I therefore order the Landlord to return the security deposit plus interest of **\$350.00** to the Tenant forthwith.

#### Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$350.00**. If necessary, this order may be filed in the Small Claims Court 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: June 14, 2012.

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Residential Tenancy Branch