



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF, MNR, MND

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The landlord's application is a request for a monetary order for \$2400.00 and a request for recovery of the \$50.00 filing fee.

The tenant's application is a request for a monetary order in the amount of \$775.00 and a request for recovery of the \$50.00 filing fee.

### Background and Evidence

The landlord testified that:

- The original tenancy was a fixed term tenancy to the end of February 2012.
- The tenants subsequently agreed to another fixed term, running to the end of July 2012. Nothing was put in writing, however the tenants supplied postdated

cheques to the end of July 2012 and therefore they were quite aware that this was a fixed term to the end of July 2012.

- The tenant subsequently gave notice in May of 2012 that they would be vacating at the end of June 2012.
- The tenants vacated by the end of June 2012 however they put a stop payment on the July 2012 rent cheque and therefore they lost the rental revenue for that month.
- The tenants also damaged a microwave oven when they were in the rental unit, twisting the door beyond repair and originally he had estimated \$450.00 to replace that oven, however the actual costs turned out to be \$420.00.
- The tenants also failed to pay the strata move out fee of \$100.00 as required in the strata bylaws.
- The tenant had agreed to a \$100.00 deduction from their security deposit for general cleanup etc..

The applicants are therefore requesting an order as follows:

Lost rental revenue for July 2012	\$1750.00
Replace damaged microwave	\$420.00
Move out fee	\$100.00
General cleanup and painting	\$100.00
Filing fee	\$50.00
Total	\$2420.00

The respondent's testified that:

- They never agreed to a fixed term extension to the original agreement, they only agreed to a month-to-month tenancy.
- They did give postdated cheque to the end of July 2012, however that was only to make it easier for the landlord.
- They gave proper Notice to End Tenancy, giving notice in May 2012 and ending the tenancy in June 2012.
- Rent was paid in full to the end of June 2012, and they put a stop payment on the July 2012 rent cheque because they were no longer responsible for rent after the end of June 2012.
- The microwave oven did not work right from the beginning of the tenancy, and it likely warped from the heat of the stove underneath it.
- They never used the microwave oven, as they had their own, and did not cause any damage to the microwave oven.
- They were not told about the move out fee, and were never charged a move-in fee. It is mentioned in the strata rules that were left in the unit however this was never pointed out to them.

- They did agree to a \$100.00 deduction from their security deposit for general cleaning, it had nothing to do with painting or a microwave oven. They do however still agree to this \$100.00 deduction
- They ask that the remainder of the security deposit in the amount of \$775.00 be returned and that the filing fee be ordered paid by the landlord.

### Analysis

#### July 2012 rent

It is my finding that the landlord has not met the burden of proving that the tenants agreed to a fixed term tenancy agreement to the end of July 2012.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

The original tenancy agreement ended on February 28, 2012 and since no fixed term tenancy agreement was signed it reverted to a month-to-month tenancy.

Therefore under a month-to-month tenancy the tenants had the right to give one clear months notice to end the tenancy, which they did, and therefore they are not liable for the July 2012 lost rental revenue.

#### Microwave oven

There is no indication of any damage to the microwave oven listed on the move in inspection report, and yet on the move out inspection report it has been noted that the microwave door has been damaged. It's therefore my finding that the tenants are liable for the damage to the microwave door.

The tenants claim the damage likely occurred from the heat of the stove below, however I find that very unlikely as over the stove microwaves are designed to be over top of hot stoves.

Therefore I will allow a portion of the landlords claim for replacing the microwave oven, I will not allow the full amount however as this was not a new oven, and the landlord has failed to provide any invoices or independent estimates of the cost of replacing the oven.

The amount I will allow for the microwave oven is \$150.00.

Strata move out fee

I will allow the landlords claim for the strata move out fee because if the strata charges a fee, that is a fee that the tenants must pay and not the landlord.

General cleaning

The tenants do not dispute this portion of the claim.

Therefore the total amount of the landlord's claim that I have allowed is as follows:

microwave oven	\$150.00
Strata move out fee	\$100.00
General cleaning	\$100.00
Total	\$350.00

Conclusion

I have allowed \$350.00 of the landlords claim, and therefore I order that the landlord may retain \$350.00 of the tenant's security deposit and I have issued a monetary order for the return of the remaining \$525.00.

I further order that the landlord and the tenants each bear the cost of the filing fee they paid for their application for dispute resolution, as they have only established a portion of each of their claims.

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 17, 2012.

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Residential Tenancy Branch