



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNSD, MND, MNDC, 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 cleaning, repairs, replacement of items and the filing fee. The tenant applied for a monetary order for the return of double his security deposit and for 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? Is the tenant entitled to the return of double the security deposit?

### **Background and Evidence**

The tenancy started on March 05, 2010 and ended on October 31, 2011. The monthly rent was \$1,050.00 due on the first of the month and did not include utilities. Prior to moving in, the tenant paid a security deposit of \$525.00.

The landlord stated that within 15 days of the end of tenancy, she mailed the balance of the post dated rent cheques to the tenant along with a letter explaining why she was not returning the security deposit. The tenant stated he received mail from the landlord mid December which is about six weeks after the tenancy ended.

In January 2012, the tenant contacted the landlord again and asked for his security deposit. The landlord replied that she was retaining the deposit and sent him photographs of the condition of the unit at the end of the tenancy. The tenant filed this application on June 26, 2012 and the landlord responded by filing an application of her own on August 20, 2012.

The landlord has applied for a monetary order for the following and has provided photographs and invoices to support her claim.

1.	Replace missing cupboard	\$192.64
3.	Replace planter pot	\$40.00
4.	Replace carpet	\$200.00
5.	Cleaning 10 hours	\$255.00
6.	Removal of items left behind	\$120.00
7.	Replace pantry door, seal holes, steam clean carpet	\$175.00
8.	Filing fee	\$50.00
	Total	<b>\$1,116.62</b>

The tenant has applied for the return of double the security deposit and for the recovery of the filing for a total of \$1,100.00.

### **Analysis**

#### **Landlord's application:**

1. Replace missing cupboard - \$192.64

Both parties agreed that there was a cupboard in the bedroom at the start of tenancy. The tenant stated that he removed it and described it as a piece of “garbage” that was not listed in the tenancy agreement. The landlord filed a photograph showing the location on the wall that it was attached to.

The landlord is looking to replace it as it was installed in a bedroom that had no closet. The tenant stated that he left it in the laundry room, but the landlord stated that it was missing.

Based on the photographs and the testimony of both parties, I find that the tenant removed the cupboard and did not return it to its original location. On a balance of probabilities, I find that it is more likely than not that the tenant disposed of it because he described it as “garbage”. The landlord has filed evidence of the cost of replacing it which adds up to approximately \$125.00 with taxes. The landlord stated that she purchased it about seven to eight months prior to the start of the tenancy.

Section 40 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 cupboard.

As per this policy, the useful life of furnishings is ten years. Based on the landlord's testimony of the age of the cupboard and the cost to replace it, I find that at the end of the tenancy, the cupboard had seven years and nine months of useful life left. Accordingly, the landlord is entitled to \$96.00 which is the approximated prorated value of the remainder of the useful life of the cupboard.

2. Replace missing heater - \$83.98

The landlord testified that the heater was placed in a room that needed additional heating due to its size. Again the testimony of both parties contradicted each other. The tenant agreed that there was a heater there but stated that it was very old and that he had left it in the rental unit at the end of the tenancy. The landlord stated that it was approximately four to five years old and in working condition but was missing from the rental unit.

Based on the testimony of both parties, the evidence filed by the landlord for the replacement cost and the age of the heater, I find it appropriate to award the landlord, \$40.00 towards its replacement.

3. Replace planter pot - \$40.00

Again the testimony of both parties was contradictory. The planter is not listed on the addendum to the tenancy agreement and therefore, I find that the landlord has not proven her claim for cost of replacement.

4. Replace carpet - \$200.00

The landlord agreed that she had given the tenant permission to remove this section of the carpet. Therefore, I find that the landlord must bear the cost of replacing the carpet

5. Cleaning 10 hours - \$255.00

The landlord filed photographs that depict the condition of the unit as left by the tenant. Based on the photographs, I find that the tenant is responsible for the cost of cleaning.

6. Removal of items - \$120.00

The photographs also depict several items that needed to be removed. The landlord stated that she contacted the Residential Tenancy Branch and based on the information she received she stored these items for at least three months prior to disposing of them. I find that the landlord is entitled to the cost of the removal of these items.

7. Replace pantry door, seal holes and steam clean carpet - \$175.00

The tenant agreed that there were holes in the ceiling made by his roommate. The photographs show some stains on the carpet and therefore I find that the landlord is entitled to her claim of \$175.00.

8. Filing fee - \$50.00

The landlord has proven most of her claim and is therefore entitled to the recovery of the filing fee of \$50.00.

Overall the landlord has established the following claim:

1.	Replace missing cupboard	\$96.00
3.	Replace planter pot	\$0.00
4.	Replace carpet	\$0.00
5.	Cleaning 10 hours	\$255.00
6.	Removal of items left behind	\$120.00
7.	Replace pantry door, seal holes, steam clean carpet	\$175.00
8.	Filing fee	\$50.00
	Total	<b>\$736.00</b>

Tenant's application:

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the sworn testimony of both parties, I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$525.00 and is obligated under section 38 to return double this amount plus accrued interest on the base amount (\$0.00). Since the tenant has proven his claim, he is also entitled to the recovery of the filing fee of \$50.00. Therefore, the tenant has established a claim for \$1,100.00.

Overall the landlord has established a claim of **\$736.00** and the tenant has established a claim for **\$1,100.00**. I will use the offsetting provisions of section 72 of the *Act* to offset the landlord's claim against the tenant's claim and I grant the tenant an order under

section 67 of the *Residential Tenancy Act* for the balance due of **\$364.00**. 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 **\$364.00**.

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 05, 2012.

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Residential Tenancy Branch