



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. This hearing also dealt with an application by the tenant seeking the return of the security deposit and a monetary order for loss or damaged suffered under the Act, the regulations or the tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issue to be Decided

Is either party entitled to a monetary order?

### Background, Evidence and Analysis

The parties agreed to the following facts. The tenancy began on January 15, 2012 and ended on November 2, 2012. The tenancy was a fixed term tenancy that was to end on January 15, 2013. The tenant was obligated to pay \$750.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$375.00 security deposit. A condition inspection report was not conducted at move in. A condition inspection report was conducted at move out.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one

party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

As each party has made an application I will address each claim and my findings as follows;

**Landlords First Claim** - The landlord is seeking \$85.00 for carpet cleaning. The tenant does not dispute this and agrees with this claim. The landlord is entitled to \$85.00.

**Landlords Second Claim** – The landlord is seeking \$35.00 for furniture removal. The tenant acknowledges that he did leave the item behind and agrees that the landlord should be compensated for this portion of their application. The landlord is entitled to \$35.00.

**Landlords Third Claim** - The landlord is seeking \$50.00 for the tenant “over holding” the unit for two days. The tenant acknowledges and agrees to this portion of the landlords claim. The landlord is entitled to \$50.00.

**Landlords Fourth Claim** – The landlord is seeking \$70.00 for oven cleaning, \$65.00 for damage done to the drapes, \$135.00 for flea treatment to the rental unit, and \$6.00 for light bulb replacement. The tenant disputes this portion of the landlords claim. The landlords stated that the unit was renovated prior to the tenant moving in due to a fire, however the fridge and stove and the curtains were not replaced. The landlords stated that they had seen a cat in the unit several times and that was in violation of the tenancy agreement. The landlords stated that the drapes had claw marks from the cat. The tenant denies ever having a pet and doesn't understand why the landlords would make these allegations. The tenant stated that the fridge, stove and drapes were all very old; probably from the seventies. The tenant stated that much of the building had fleas and that he himself had noticed them since he first moved in. The tenant disputes that any light bulbs were burnt out; the tenant stated he had left many energy efficient bulbs

behind. The tenant also disputes the oven needed any cleaning. The tenant stated that he had cleaned it better than it had been given to him. The tenant stated numerous times during the hearing that he did not have a pet and that he should not be responsible for flea treatment.

When a party makes a claim for damages they must provide proof of loss or “out of pocket” costs. Although the landlords stated there was “no need for the move in inspection because the suite was brand new”, I do not find that to be the case based on the testimony and evidence provided. The condition inspection report is a vital tool in any tenancy. Without the move in inspection report I am unable to ascertain the true condition of the unit or any changes in condition that may have occurred. The landlord conducted a move out condition inspection report and nowhere in that report does it state “burnt or missing bulbs or dirty oven”. The landlord must provide a clear and accurate condition of the unit at move in and move out. The Act clearly outlines that a landlord must conduct a move in and move out condition inspection report; regardless if the suite is new. Based on all of the above, the inconsistencies and incomplete nature of the condition inspection report provided, I dismiss this portion of the landlords’ application.

I will address the tenants’ claims and my findings as follows;

**Tenants First Claim** - The tenant is seeking the recovery of his first two months rent at his new residence. The tenant pays \$950.00 per month, for a total claim amount of \$1900.00. The tenant stated that he had to move early based on being threatened and intimidated by the son of another tenant. The tenant stated that he had to call the local police to intervene and was told to move for his own safety. The tenant stated that he had pleaded with the landlord for help but to no avail. The tenant feels that the landlord should bear the costs of the higher rent incurred as a result of these threats. The landlord disputes this claim. The landlord stated that the son of the other tenant was only a visitor and had very limited power to address the matter. The landlord offered to assist the tenant with the cooperation of the local police but was denied. The landlord

had spoken to the other tenant about this issue and was making every attempt to remedy this problem within the confines of Act. The landlord stated that a warning notice had been given to the other tenant whose son was making threats. I accept the landlords' testimony that they were acting in a reasonable and timely manner. The landlord stated several times that she was working with the local police and that this matter had only come to her attention just prior to the tenant giving notice to move out. Based on all of the above I do not find that the tenant has proven this portion of his claim and I therefore dismiss this portion of his application.

The tenant acknowledges financial responsibility for \$170.00 of costs incurred by the landlord. Based on that acknowledgement and my findings above, I find that the tenant is entitled to the return of \$205.00 of his security deposit. As neither party has been completely successful in their application I decline to award either party the recovery of the filing fee and they must each bear that cost.

#### Conclusion

The tenant has established a claim for \$205.00. I grant the tenant an order under section 67 for the balance due of \$205.00. 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: February 12, 2013

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Residential Tenancy Branch

