



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDC, MNSD, FF

### Introduction

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

The Tenant applied on March 25, 2013 for:

1. An Order for the return of the security deposit – Section 38.

The Landlord applied on March 26, 2013 for:

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

The Tenant and Landlord 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?

Is the Landlord entitled to recovery of the filing fee?

Is the Tenant entitled to return of the security deposit?

### Background and Evidence

The tenancy started on April 1, 2012 for a fixed term to February 28, 2013. At the outset of the tenancy the Landlord collected \$625.00 as a security deposit and \$625.00 as a pet deposit. The Tenant states that she moved out of the unit on March 3, 2013 and left the keys in the unit. The Landlord states that the Tenant moved out on March 5, 2013 but that the Landlord did not receive the keys until March 11, 2013 when he attended the unit. The Landlord states that the Tenant had called earlier that the keys would be left. There is no dispute that the Tenant left items at the unit including a couch and barbeque. The Landlord states that after the Tenant was unable to attend the first move-out inspection offered for March 4 or 5, 2013, a second opportunity was not provided. There is no dispute that the Tenant provided her forwarding address in writing while still in the unit. The Tenant does not waive return of double the security deposit.

The Tenant does not dispute the Landlord's claim for \$300.00 in unpaid rent and \$537.33 for unpaid utilities to March 3, 2013.

The Landlord states that the Tenant failed to clean the unit at move-out and left the unit damaged. The Landlord states that the Tenant's barbeque and couch were taken to the dump. The Landlord states that a vent cover was missing and the bedroom wall was damaged by the door hitting the wall. The Landlord states that the doorstopper must have come off. The Landlord states that there was other minor drywall damage on a door frame that required patching and a cupboard hinge was broken. The Landlord provided some photos of the unit. The Tenant agrees that the cupboards were not cleaned inside and that the oven could have been cleaner but that the unit was otherwise cleaned at move out. The Tenant states that the vent cover had been hanging by tape and finally came off. The Tenant states that it was left in the unit under the sink. The Tenant states that the cupboard hinge came loose during the tenancy and that the Tenant just left it as it was.

The Parties agree that on or about February 1, 2013 both Parties agreed that the tenancy would end at the expiry of the fixed term of February 28, 2013. The Landlord states that the unit was advertised after March 11, 2013 on craigslist and did not inform the Tenant that he would be seeking any lost rental income as the plan was to rent the unit quickly. The Landlord states that the unit was rented for April 1, 2012. The Landlord claims lost rental income for March 2013 and unpaid utilities from March 3 to March 11, 2013 for the Tenant's failure to leave the unit on February 28, 2013.

### Analysis

Section 44 of the Act sets out when a tenancy will end and a tenant is not liable to pay rent after the tenancy agreement has ended pursuant to this section. If however, the tenant remains in possession of the premises, the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises.

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, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Although the Landlord states that he did not recover possession of the unit until March 11, 2013, I accept the Tenant's text supported evidence that the Tenant moved out of the unit on March 3, 2013. Given the fixed term agreement and the agreement to end the tenancy on the fixed term date, I find that the tenancy ended on February 28, 2013 and that the Tenant over-held the unit for three days. I therefore find that the Landlord has substantiated three days of rent prorated at \$42.32 per day (\$1,250/31) for a total of **\$126.96**. Although the Tenant moved out of the unit after the fixed term date, I find that the Landlord knew at the beginning of February 2013 that the tenancy would be ended at the fixed term and no rent would be payable by the Tenant after this date. It would have been reasonable, if the Landlord expected rental income for March 2013, for the

Landlord to have advertised the unit far earlier than was done. Given that there is no evidence to support a finding that the Tenant caused the Landlord any lost rental income, I dismiss the Landlord's claim for lost rental income beyond March 3, 2013 and for utilities other than those agreed to by the Tenant.

Given the Tenant's evidence that the unit was not fully cleaned, I find that the Landlord has substantiated only a portion of the cleaning costs claimed in the amount of **\$50.00**. This amount reflects a reasonable amount of time at the hourly cost of \$25.00 for cleaning the oven and cupboards. I do not find that the Landlord has substantiated that the Tenant caused damages to the kitchen cupboard hinge as this could also have happened due to normal and wear and tear. I accept the Tenant's evidence that the vent was damaged to begin with and left at the unit. I therefore dismiss the Landlord's claims for the hinge and vent. Given the limited evidence of wall damage provided by the photos but accepting that at least one wall was damaged by the door hitting the wall, I find that the Landlord has only substantiated a portion of the costs claimed in the nominal amount of **\$150.00**. Based on the agreement of the Tenant, I find that the Landlord has substantiated its claim for **\$300.00** in unpaid rent and **\$537.33** for unpaid utilities to March 3, 2013. As the Landlord's application has met with limited success beyond that agreed to by the Tenant, I decline to award recovery of the filing fee. The Landlord has a total entitlement of **\$1,164.29**.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord failed to make an application for dispute resolution within 15 days of the end of the tenancy, March 3, 2013, I find that the Landlord is required to pay the Tenant double the security deposit in the amount of **\$1,250.00**.

I deduct the Landlord's entitlement **\$1,164.29** from the Tenant's entitlement of \$1,250.00 leaving **\$85.71** owed by the Landlord to the Tenant.

Conclusion

I grant the Tenant a monetary order under Section 67 of the Act for **\$85.71**. 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 28, 2013

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Residential Tenancy Branch

