



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNDC, MNSD, MND, FF*

### **Introduction**

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for the cost of repairs, painting and cleaning and for the filing fee. The landlord also applied to retain the security deposit.

The landlord testified that he served the tenant with the notice of hearing by registered mail to the forwarding address provided by the tenant. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to a monetary order for the cost of cleaning, painting and repairs and the filing fee?

### **Background and Evidence**

The landlord testified that the tenancy started on July 21, 2011 and ended on April 30, 2013. The monthly rent was \$1,600.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$800.00. Move in and move out inspections were conducted and the landlord filed copies of the reports. The landlord testified that the rental unit was a home that was approximately 35 years old and that he has owned it for the past 20 years.

The landlord stated that in August 2011, the landlord found out that the tenant had cut down a tree without requesting permission to do so. The landlord gave the tenant a warning to refrain from such activity. At the time that the tenants were moving out, the landlord found out that the tenants had also trimmed the branches of other trees on the property.

The landlord contacted a professional tree company for an opinion and an estimate. The estimate to level the stump and replace the tree is \$865.00. The landlord stated that he was waiting for the outcome of this hearing before he undertook remedial work. The landlord also stated that he did not take any action against the tenants at the time the tree was removed which is almost two years prior to the landlord's application for dispute resolution, because he decided to give the tenants a chance to refrain from causing further damage to the rental unit.

The landlord stated that he incurred an expense of approximately \$400.00 for a professional opinion but has not made a claim for this amount and did not file a copy of the invoice.

The landlord also is claiming \$300.00 toward repainting the walls and trim of a bedroom, after the tenant had changed the colour without permission. The landlord filed an email dated May 02, 2013 from the landlord's property manager that states that the trim can be painted for \$100.00 or replaced for \$400.00. The landlord stated that the bedroom has not been painted in the last twenty years and that he has not yet repainted after the tenant moved out. The landlord filed a photograph showing the partially painted trim as the tenant had left it.

The move out report indicates that the kitchen appliances were not cleaned by the tenant prior to moving out. The landlord is claiming \$35.00 for the cost of cleaning.

The landlord is also claiming \$50.00 towards the recovery of the filing fee and to keep the security deposit in partial satisfaction of his total claim of \$1,250.00.

### **Analysis**

Based on the undisputed testimony and documentary evidence of the landlord, I find that the tenant did remove a tree from the landlord's property in August 2011. Other than give the tenant a warning, the landlord did not take any action against the tenant until May 2013, when the landlord applied for dispute resolution. In addition the landlord has not yet remedied the problem and therefore has not yet incurred any expense towards the cost of doing so. The landlord has filed a letter from the contractor with an estimate of the cost to level the stump and replace the tree.

I find that the landlord should have informed the tenant of his liability to remedy the problem that he had created, shortly after the tree was removed. The landlord should also have taken action to ensure that the tenant took steps to remedy the problem.

The landlord failed to do so and waited until the tenancy had ended, to file an application for dispute resolution. For this reason and because the landlord has not yet incurred any expense to remedy the problem which is now two years old, I dismiss the landlord's claim for \$865.00.

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of interior paint is four years. The landlord testified that the rental unit has not been painted for at least 20 years and therefore even before the tenancy started, the paint had outlived its useful life and in any event would have to be painted at the landlord's cost. Therefore I dismiss the landlord's claim of \$300.00 for painting.

The tenant attended the move out inspection and based on the inspection report, I find that the kitchen appliances were left in an unclean condition. Therefore I award the landlord \$35.00 towards the cost of cleaning.

Since the landlord has proven a portion of his claim, I award the landlord the filing fee of \$50.00.

Overall the landlord has established a claim of \$85.00. I order that the landlord retain this amount from the security deposit of \$800.00 and return the balance of \$715.00 to the tenant.

### **Conclusion**

The landlord may retain \$85.00 from the security deposit.

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: August 16, 2013

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Residential Tenancy Branch

