



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; her legal counsel and the tenant.

In her evidence the landlord has included a letter dated August 13, 2013 from the landlord's legal counsel to the tenant indicating the landlord wanted to increase the amount owed by the tenant to the landlord and sought a settlement with the tenant. The letter offered an option to accept the settlement offer by September 3, 2013. The letter goes on to say that should the tenant not accept the offer by that date the landlord would proceed with this hearing and seek a monetary order in the amount of \$1,474.55.

The landlord's legal counsel noted at the start of the hearing that they did not wish to amend the Application to include additional costs and items. As such and because the landlord's original Application specifically identified that she was seeking compensation for cleaning; repairs to the siding; and utilities only I ordered that the landlord could not provide testimony regarding any additional items that had been included in the August 13, 2013 letter but were not identified in the original Application to establish whether or not the landlord is entitled to retain the deposit.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order to retain the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord provided into evidence a copy of a tenancy agreement signed by the parties on July 10, 2012 for a 1 year and 1 day fixed term tenancy beginning on August

1, 2012 for a monthly rent of \$1150.00 due on the 1<sup>st</sup> of each month with a security deposit of \$575.00 paid. The tenancy ended on June 30, 2013.

The parties agree that move in and move out inspections were completed. The landlord submits the tenant was provided with a copy of both resulting Condition Inspection Reports, but the tenant testified that he never received a copy of the move out Condition Inspection Report. The landlord testified she mailed it to the tenant at some time in early July 2013. Neither report was provided into evidence.

The landlord testified the rental unit required cleaning and yard work that she paid to have someone complete. She stated she paid \$100.00 for cleaning the interior of the rental unit; \$100.00 to clean up the yard, including cutting the grass; and \$60.00 to have waste removed from the property. The landlord provided no receipts for this work.

The tenant submits that he had cleaned the rental unit and that while he agrees that the oven and one drawer may have needed cleaning and that he would have completed this cleaning but that landlord would not let him back in to finish the cleaning. The tenant also suggests that he would have come to cut the grass but the landlord would not let him do so.

The landlord submits that the tenant had been using the barbecue too close to the exterior wall of the rental unit and caused damage to the siding. The landlord seeks compensation in the amount of \$378.50 to repair this damage. The tenant disputes that there was any damage to the siding other than natural weathering. The landlord did not provide any documentary evidence such as the Condition Inspection Reports or photographs of any damage. The landlord also did not provide any receipts for work completed.

The landlord also seeks compensation in the amount of \$96.50 for utilities. She agrees that the tenancy agreement included utilities, however, that was because she believed that only the tenant and his young daughter would be living there. She submits that the tenant had several people living in the unit and although she did not know for sure when they first started living there she does recall seeing a mattress in the laundry room in October 2012 and people being there in January 2013.

The landlord submits that as a result of the increased number of people living in the rental unit the utility costs she was paying far exceeded previous year's costs. The landlord provided one utility bill for the period ending May 28, 2013 indicating a total bill of \$187.73.

The landlord's legal counsel testified that they determined the amount owed by the tenant as the difference between the average bill from the previous year and the bill submitted into evidence for the full period of the tenancy. The landlord did not provide any other bills from either the duration of the tenancy or from the previous years. The landlord also did not provide any information regarding whether or not there had been increases in rates or other charges for any utilities in the relevant time periods.

### Analysis

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

As the landlord has provided no evidence as to the condition of the rental unit and yard at the end of the tenancy and the tenant disputes the landlord's claim that the unit required anything more than the cleaning of a drawer and the oven, I find the landlord has failed to establish the tenant left the rental unit in a condition that required cleaning.

Further, as the landlord has provided no evidence of the condition of the rental unit at the start of the tenancy or at the end and the tenant disputes the damage to siding, I find the landlord has failed to establish there was any damage caused to the siding during the tenancy. I dismiss this portion of the landlord's Application.

In regard to the marks on the wall in the living room, I find the landlord has failed to establish that these were caused during the tenancy or that they amount to anything more than reasonable wear and tear.

However, as the tenant has acknowledged that the grass needed cutting and the oven and drawer needed cleaning and despite his offer to return, after the tenancy was over, to complete these items, I find the tenant should have completed these prior to the end of the tenancy and he failed to do so. Therefore I find the landlord is entitled to compensation for these specific items. As the landlord has provided no documentary evidence to confirm how much she may have paid for cleaning and yard work I grant a nominal amount of \$50.00 for this work.

In relation to the landlord's claim for increased utility costs due to the amount of people living in the rental unit, I find the landlord has failed to provide any evidence at all that the utility bills cost her more this year than last year or prior to this tenancy. That is, that landlord has provide no evidence of the costs she was incurring previous to this tenancy and other than the one bill there is no other evidence of the costs for the balance of the tenancy.

As such, and without considering whether or not the tenant had additional occupants in the unit, I dismiss this portion of the landlord's Application.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** for cleaning and yard work. As the landlord was mostly unsuccessful in her claim I dismiss her request to recover the filing fee for her Application.

I order the landlord may deduct this amount from the security deposit held in the amount of \$575.00 in satisfaction of this claim. I grant a monetary order in the amount of **\$525.00** to the tenant for return of the balance of the deposit.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: October 10, 2013

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Residential Tenancy Branch

