



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REGENT PARK PINNACLE REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** *MNDC, MNSD, MNR, 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 and painting. The tenant applied for the return of the security deposit, moving costs and compensation. Both parties applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony. The tenant testified that she had refused part of the landlord's evidence by not picking up a registered mail package.

### **Issues to be decided**

Is the landlord entitled to a monetary order for cleaning and painting of the rental unit?  
Is the tenant entitled to moving costs, and compensation?

### **Background and Evidence**

The tenancy started on January 01, 2013 for a fixed term of one year ending December 31, 2013. A copy of the tenancy agreement was filed into evidence. By initialling the box beside the term regarding the end of the fixed term, the tenant agreed that she would move out on the end of the fixed term. The monthly rent was \$1,800.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$900.00.

The tenant moved out on December 23, 2013. A move out inspection was conducted that day and the tenant provided the landlord with a forwarding address in writing. A copy of the move in and move out inspection report was filed into evidence. The landlord made this application in a timely manner, on January 03, 2014.

The tenant testified that on December 09, 2013, she put a load of laundry into the machine at 2:00 am. At around 3:40am, the manager received a message regarding a water leak in a unit two floors below this rental unit. Upon checking it out, he found that the source of the water was from the rental unit and he knocked on the door of the rental unit to inform the tenant of the water leak. The washer was leaking water which caused considerable damage to the rental unit, and other areas of the strata.

A restoration company was called in. Blowers were placed inside the unit. Upon inspection, it was determined that the damage was considerable and involved restoration that required the rental unit to be vacant. The landlord attempted to offer the tenant alternative accommodation, but the tenant refused all offers on the grounds that they were not suitable. The landlord stated that on December 14, 2013 the tenant informed him that they had found a place to rent and would be moving out prior to December 31, 2013.

The tenant hired a technician to examine the washer to determine the cause of the leak at a cost of \$60.00 and is claiming this amount. During the hearing, the landlord explained that his application did not involve damages resulting from the water leak as he intended to pursue this portion of his claim in the Supreme Court of Canada. He maintained that this application was solely for the cost of painting and cleaning and therefore he would not be presenting evidence regarding the cause of the water leak.

After the incident, the parties corresponded with each other regarding the return of rent and in an email dated December 17, 2013, the tenant agreed to accept \$480.00 as return of rent for December. The tenant acknowledged receipt of this amount.

The tenant hired a mover and filed a receipt in the amount of 720.56 for a move on December 23, 2013. The tenant is claiming \$400.00 towards the cost of this move as she stated that it was an urgent move and therefore the cost was considerably higher.

The landlord stated that the tenant left the unit in a condition that required cleaning and painting. The landlord filed photographs of the unit and an invoice in the amount of \$651.00 to support his claim. The tenant argued that the photographs were not taken during the move out inspection. The landlord agreed but stated that the photographs were taken the next day.

The photographs show that the unit required cleaning and the tenant agreed that she had not fully cleaned the rental unit and that the wall above the stove was left greasy. The tenant stated that the landlord's claim for cleaning was excessive and she agreed to cover \$100.00.

The landlord was not sure of when the rental unit was last painted but stated that it was in good condition at the start of tenancy as indicated in the move in condition report. The photographs indicate that some walls are stained.

The tenant is claiming \$900.00 as compensation for the inconvenience caused by the restoration work, for the cost of eating out, doing laundry and living with the noise of blowers and the presence of workers in the unit. The tenant stated that she was unable to cook due to the presence of blowers and restoration workers. The landlord stated that the work stopped at 4:30pm and that the blowers were on continuously for the first 72 hours and then intermittently.

The tenant is claiming the following:

1.	Return of the security deposit	\$900.00
2.	Compensation	\$900.00
3.	Urgent moving costs	\$400.00
4.	Technician's report	\$60.00
5.	Filing fee	\$50.00
	<b>Total</b>	<b>\$2,310.00</b>

### **Analysis**

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

##### **1. Painting - \$262.50**

The landlord was unable to provide information regarding when the rental unit was last painted. The photographs indicate that some walls would require painting. However since the restoration work is ongoing, the unit would have to be repainted upon completion. Since the move out inspection report only states that some walls are dirty and does not refer to stains on the walls, I dismiss the landlord's application for the cost of painting.

##### **2. Cleaning \_ \$388.50**

Based on the photographs filed into evidence, the move out inspection report, the invoice and the testimony of both parties, I find that the landlord has established a claim for the cost of cleaning in the amount of \$388.50.

3. Filing fee - \$50.00

The landlord has established a portion of his claim and therefore is entitled to the recovery of the filing fee of \$50.00

Tenant's application:

1. Return of the security deposit - \$900.00

The tenant is entitled to the return of the security deposit

2. Compensation - \$900.00

The tenant stated that from the time the flood occurred on December 09, 2013 to the end of tenancy on December 23, 2013, the tenants, consisting of a family of five, suffered a great deal of inconvenience due to the ongoing restoration work. The tenant stated that she was unable to cook due to the presence of blowers and workers and therefore incurred the additional cost of eating out. Since the laundry facility was not available, the tenant also incurred costs to use an alternative facility.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. Such interference might include intentionally removing or restricting services to the tenant.

In this case, the landlord was simply carrying out his responsibilities to restore the rental unit to a condition that complies with the health, safety and housing standards. However in order to carry out this duty, the landlord inconvenienced the tenant by placing blowers inside the unit and by having workers in and out of the rental unit regularly from the time the leak occurred till the tenant moved out. The tenant also had to find an alternative laundry facility. I find that this inconvenience to the tenant resulted in a reduction of the value of the tenancy.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed. It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. However a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

The tenant stated that she returned home around 5 pm with her children and agreed that the workers were not present in the unit at that time. Since the kitchen was fully functional, I find that the tenant had cooking facilities and accordingly had the opportunity to cook and have meals at home.

However, I also find that the tenant was inconvenienced to some extent by the ongoing restoration work and the loss of the use of laundry. Based on the sworn testimony of both parties, I find that the tenant has not proven negligence on the part of the landlord but has proven that she was inconvenienced by the restoration work. Therefore I find that the tenant is entitled to compensation. I must now determine the quantum of the damages that the tenant is entitled to.

*Residential Tenancy Policy Guideline #16* states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the extent of inconvenience to the tenant for the period of December 09 to December 23, 2013, I award the tenant a nominal award of \$200.00

3. Urgent Moving costs - \$400.00

Based on the tenancy agreement the tenant was in a fixed term tenancy which would end on December 31, 2013 and the tenant was required to move out at that time.

The tenant testified that she found alternative accommodation by December 14 and moved out on December 23, 2013. Based on the tenant's testimony and the term of the tenancy agreement, I find that the tenancy would end anyways on December 31, 2013 and the tenant would have to move out at her own expense. The landlord made efforts to offer the tenant alternative accommodation which the tenant found unsuitable and refunded a portion of the rent. Based on the above, I find that the tenant has not established a claim for the cost of urgent moving.

4. Technician's report - \$60.00

The landlord hired a technician without approval from the landlord to cover the cost of doing so. Therefore the tenant must bear the cost of the technician's report.

### 3. Filing fee - \$50.00

The tenant has established a portion of her claim and therefore is entitled to the recovery of the filing fee of \$50.00

The tenant has established the following claim:

1.	Return of the security deposit	\$900.00
2.	Compensation	\$200.00
3.	Urgent moving costs	\$0.00
4.	Technician's report	\$0.00
5.	Filing fee	\$50.00
	<b>Total</b>	<b>\$1,150.00</b>

The landlord has established a claim of \$438.50 and the tenant has established a claim of \$1,150.00. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$711.50, which consists of difference between the established claims of both parties. 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 **\$711.50**.

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: April 16, 2014

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Residential Tenancy Branch

