



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNSD, MNDC, 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 Landlord applied on March 10, 2014 for:

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

The Tenant applied on March 21, 2014 for:

1. An Order for the return of the security deposit – Section 38;
2. A Monetary Order for compensation or loss - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlords 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 Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on September 15, 2013 and ended on February 28, 2014. Rent of \$1,050.00 was payable monthly. At the outset of the tenancy the Landlord collected \$525.00 as a security deposit and \$525.00 as a pet deposit. The Landlord received the Tenant's forwarding address prior to the end of the tenancy. No move-in condition inspection and report was completed. The Landlord returned \$300.00 to the Tenants in March 2014 and the Tenants have waited for the hearing outcome before cashing it.

The Tenant claims return of the double the security deposit. The Landlord states that they retained the remaining amount of the security deposit for the unpaid utilities.

The Landlord states that the house was newly renovated at the onset of the tenancy and there were no existing damages to the unit when the tenancy started. The Parties agree that a walkthrough was done at the end of the tenancy and notes were made of the state of the unit with initials by the Tenant indicating agreement with damage.

The Tenant does not dispute the Landlord's claim for an adjusted amount of unpaid utilities in the amount of \$721.09, the loss of value to the stove in the claimed amount of \$100.00 and the cost to replace a shower rod in the amount of \$14.53.

The Landlord states that the Tenants failed to leave the unit reasonably clean and claim \$65.59 for the costs of their 3 hours of labour to clean the oven, empty a fireplace, sweep up glass on the driveway, remove paint from the cupboards and clean behind appliances that are not on rollers. The Tenant states that the stove was as clean as the stove was at move-in and believes that the Landlord is claiming too much for the remaining items that were minor.

The Landlord states that the Tenants were given keys to the unit at the onset, that the Tenants replaced the locks after they moved in and that the Tenants failed to return all of the keys. The Landlord claims \$12.05. The Tenant states that they were only provided one skeleton key for an interior door at the onset.

The Landlord states that the Tenants left the laminate flooring in the living room with a gouge and claim \$50.00 for the loss in the value of the floor. The Tenant denies causing the damage, states that no gouge was noticed at any time including during the move out inspection and that the living room was covered by a rug through-out the tenancy. The Tenant states that no gouge was noted at move-out either. The Landlord states that the damaged area was near the stairs and fireplace and not covered by a rug.

The Landlord states that the Tenants were given permission to paint the kitchen and that they did a poor job requiring it to be repainted. The Landlord states that the job was not checked on by the Landlord and was only seen at move-out. The Landlord claims \$199.81 for the cost of supplies and the landlord's labour of 8 hours. The Tenant states that they painted the kitchen with the colors and paints as instructed and approved by the Landlord and only left the area behind the stove and fridge unpainted.

### Analysis

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 24(2) of the Act further provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. 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.

Although the Landlord's right to claim against the security deposit for damages to the unit has been extinguished given the lack of a move-in condition inspection and report,

as this section does not extinguish the Landlord's right to claim against the security deposit for other losses such as unpaid utilities, I find that the Landlord's right to claim against the security deposit was not extinguished. As the Landlord made its application within 15 days of the end of the tenancy, I find that the Landlord is not required to repay double the security deposit and I dismiss the Tenant's application.

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

Given the Tenant's evidence of the state of the stove at move-in, I find that the Landlords have not established that the Tenants left the stove unreasonably clean in relation to the move-in condition at the start of the tenancy. Given the undisputed evidence that some cleaning tasks were left which I find are minor in nature, I find that the Landlord has substantiated a nominal amount of **\$20.00**. Accepting the Tenant's evidence that they were only provided with one interior key at the onset of the tenancy, I find that the Landlord has failed to substantiate that the Tenants caused the Landlord to incur costs for exterior keys. I dismiss the claim for the keys. Given the Tenant's evidence in relation to the move-out inspection not noting any damage to the flooring, I find that the Landlord has not substantiated that the Tenant caused the damage to the floor and I dismiss this claim. It is clear that the Tenant left the painting of the unit unfinished behind the appliances and not painted to the standards of the Landlord.

However the Landlord must assume responsibility for having provided permission to the Tenants without any conditions or oversight on the quality of work given that the Tenants are not professional painters. As a result, I find that the Landlord's own decisions and actions led to the poor paint job and I dismiss this claim.

Based on the agreement of the Tenant I find that the Landlord has substantiated its claim to unpaid utilities of **\$721.09**, the loss of value to the stove of **\$100.00** and the cost to replace a shower rod of **\$14.53**. As the Landlord's claim has met with some success I find that the Landlord is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$906.02**. As the Landlord still holds **\$750.00** of the security deposit, the original amount having accrued zero interest, I deduct this amount from the entitlement leaving **\$156.02** owing by the Tenants to the Landlord.

#### Conclusion

I Order the Landlord to retain the amount of \$750.00 from the remaining security deposit plus interest of \$750.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$156.02**. 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: July 4, 2014

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Residential Tenancy Branch

