



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Offwest Holdings Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            MNR, MND, MNDC, MNSD, FF

### Introduction

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

1. A Monetary Order for unpaid utilities - Section 67;
2. A Monetary Order for damages to the unit - Section 67;
3. A Monetary Order for compensation for loss - 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 Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matters

The Parties confirmed that their evidence packages to each other and the Residential Tenancy Branch (the "RTB") were provided late and both are prepared to accept the packages and move forward with the hearing. The Landlord withdrew the claim for unpaid utilities as they have been paid.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The following are undisputed facts: The tenancy started on October 1, 2013 and ended on October 31, 2014. Rent of \$750.00 was payable monthly. At the outset of the tenancy the Landlord collected \$375.00 as a security deposit and during the tenancy collected \$375.00 as a

pet deposit. The Landlord received the Tenant's forwarding address on November 17, 2014. Although the Parties conducted a walkthrough at both move-in and move-out, no condition inspection reports were completed. The Tenant disagreed at the move-out walk through with the Landlord's claims of damages. The Tenant owes the Landlord **\$29.49** for the cost of bedroom blinds that were missing at the end of the tenancy.

The Landlord states that the Tenant damaged the bathroom flooring that was not damaged or discolored at move-in. The Landlord states that the damages were discovered at a June 2014 inspection of the unit and that the Tenant was asked to repair the damage. The Landlord states that prior to this inspection the Tenant had not said anything about the flooring. The Landlord thinks that the Tenant must not have used a shower curtain. The Landlord states that the flooring was at least 10 years old but was in good condition. The Landlord states that the flooring had to be removed and replaced. The Landlord states that the concrete under the flooring was not damaged or discolored. The Landlord claims \$325.00 for its own labour of 11 hours and \$150.00 for the supplies. The Landlord provided photos of the flooring prior to the tenancy, the damaged floor and the flooring replacement. No invoice was provided for the supplies.

The Tenant states that he has no idea of any of the costs being claimed by the Landlord where no receipts were provided.

The Tenant states that the flooring was discolored and pointed out to the Landlord at move-in. The Tenant states that the Landlord informed the Tenant that it was only discolored because of wear. The Tenant states that the discoloration was seen by the Landlord during a June 2014 inspection but nothing was said to the Tenant about the Tenant causing this discoloration until September 2014.

The Tenant states that the discoloration became worse during the tenancy likely due to the sealant around the base of the bathtub that was missing and peeling off. The Tenant states that the discoloration may have been mold as the remaining sealant and the grout around the bathroom was also discolored. The Tenant states that the Landlord had informed them during the June 2014 inspection that the bathroom flooring, referred to by the Tenant as linoleum, covered older flooring that had not been removed. The Landlord states that the Tenant is giving

totally false evidence and that the floor was brand new. The Landlord states that the flooring was replaced before the end of the tenancy as the Tenant refused to replace it himself.

The Landlord states that at the end of the tenancy all the bulbs were missing in the unit and that the Tenant left a damaged kitchen light fixture. The Landlord states that they were replaced. The Landlord claims a global amount of \$79.03 for the material costs and this amount includes the cost of the undisputed amount of \$24.49 for the blinds. The Landlord claims \$75.00 for the labour to clean and install the fixtures, including the blinds. The Landlord states that this amount also includes travel time to the stores and back and includes the cost of replacing a toilet paper and towel hanger that were missing after the Tenant moved out. No photos of these items were provided by the Landlord.

The Tenant states that no bulbs were missing and no light fixture was damaged. The Tenant states that they had to have lighting for the move-out as it took place during the night. The Tenant states that there was no towel hanger at move-in or during the tenancy and that the toilet paper holder was present when they moved out.

The Landlord states that the Tenant failed to clean the fridge and stove and that the Landlord spent between 1.5 and 2 hours cleaning the appliances. The Landlord claims \$40.00 for their labour. No photos of the appliances were provided by the Landlord. The Tenant states that the fridge was wiped out and the stove was cleaned by the roommate who works professionally as a residential and commercial cleaner. The Tenant states that the oven was never used.

The Landlord states that the Tenant did not clean the carpets as required under the addendum. The Landlord initially states that they are making the claim pursuant to the addendum that requires the Tenant to provide a receipt as proof of carpet cleaning or the sum of \$120.00 will be deducted from the security deposit. The Landlord also states that they did clean the carpet by themselves as they appeared dirty. The Landlord states that they used their own machine, as they are in the business of renting such machines, and that it took 2 hours to clean the bedroom and den carpet. The Landlord claims \$120.00 for the costs. The Tenant states that the carpets were steam cleaned with a machine owned by the roommate's parent.

The Tenant asks whether the Landlords are required to return double the security deposit to the Tenant.

### Analysis

Section 23 of the Act requires that at the start of a tenancy, a landlord and tenant must together inspect the condition of the rental unit and the landlord must complete a condition inspection report in accordance with the regulations. Section 24(2) of the Act 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. Based on the Landlord's evidence that no move-in condition report was completed, I find that the Landlord's right to claim against the security deposit for damage to the residential property was extinguished at the beginning of the tenancy.

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. RTB Policy Guideline #17 provides that a security deposit may be ordered returned on either a landlord or tenant application. As the Landlord could not make an application to claim against the security deposit due to that right already being extinguished, and considering that the Landlord did not return the security and pet deposits in full within 15 days of receipt of the Tenant's forwarding address, I find that the Landlord must now return double the combined pet and security deposit plus zero interest in the amount of **\$750.00** to the Tenant.

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. 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.

Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. The Landlord provided no photos of missing lightbulbs, missing paper holder, a damaged light fixture. There is no move-in report to document the existence of the towel bar and none of the bathroom photos show a wall with a missing towel holder. There is no move-out condition report available to support the Landlord's evidence that items were not present or were damaged at move-out. Considering that the Tenant's evidence denying damage or loss of these items held a ring of truth, I find that the Landlord has not shown on a balance of probabilities that the Tenant damaged the items. I therefore dismiss the claim for the costs to replace these items. As the Landlord has claimed a global amount for the labour to install these items and it cannot be determined what portion of this claim may have been for the labour to install the blinds, the replacement cost of which was not disputed by the Tenant, I must dismiss the all the costs represented by the \$75.00 claim amount. For the same reasons of having unsupported evidence in the face of the Tenant's credible evidence, I also dismiss the claims for cleaning the fridge and stove.

Given the Landlord's evidence of the addendum and initial reliance on that term to justify its claim, considering that there are no photos of a soiled carpet, and considering the Tenant's evidence of carpet cleaning, I find that the Landlord more likely claimed the amount pursuant to the addendum and that the carpet was in fact cleaned by the Tenant. As a result I find that the Landlord has failed to establish that the Tenant left the carpet unclean and I dismiss the claim for the costs of cleaning the carpet.

Residential Tenancy Branch Policy Guideline #40 sets out the useful life of building elements. The guideline sets the life of tile flooring at 10 years. Although the Landlord replaced the bathroom flooring with tiles, the Landlord did not dispute the Tenant's characterization of the damaged flooring as linoleum. Reasonably considering that linoleum would have a less durable life than tile, considering that there is no move-in condition report and the Tenant's evidence of discoloration at move-in, and given the Landlord's evidence that the damaged flooring was at least 10 years old, I find on a balance of probabilities that the flooring at the end of the tenancy had no useful life left and that the Landlord therefore suffered no loss. I dismiss the claim for the cost to replace the flooring.

As the Landlord has only been successful with the undisputed portion of the application I decline to award recovery of the filing fee. Deducting the undisputed amount of **\$29.49** owed to the Landlord from the **\$750.00** owed to the Tenant leaves **\$740.51** to be returned to the Tenant forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$740.51**. 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 14, 2015

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Residential Tenancy Branch

