



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding OM SHAKTHI BUSINESS SUPPORT SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      MNR, MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid utilities, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain a portion of the tenant's security and pet damage deposits ("deposits") in satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. "Witness ER" testified on behalf of the tenant at this hearing and both parties had an opportunity to question the witness. This hearing lasted approximately 93 minutes in order to allow both parties to fully present their submissions.

The tenant confirmed receipt of the landlord's application for dispute resolution on July 10, 2015. The tenant confirmed receipt of the landlord's written evidence package on December 14, 2015, which the landlord claimed was sent by express mail courier on December 11, 2015. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's Application. The tenant confirmed that she reviewed the written evidence, was prepared to proceed with this hearing, and was agreeable to me considering the evidence at this hearing and in my decision, despite the fact that it was received less than 14 days prior to this hearing, contrary to Rule 3.14 of the Residential Tenancy Branch *Rules of Procedure*. Accordingly, I considered the landlord's entire application, including the written evidence package, at this hearing and in my decision.

The landlord confirmed that he received the tenant's written evidence package and reviewed it prior to this hearing. Both parties agreed that the tenant's written evidence was served and received more than 7 days prior to this hearing, in accordance with Rule 3.15 of the Residential Tenancy Branch *Rules of Procedure*. In accordance with sections 88 and 90 of the *Act*, I find

that the landlord was duly served with the tenant's written evidence package. I considered the tenant's written evidence package at this hearing and in my decision.

#### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid utilities, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain a portion of the tenant's deposits in satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for his Application?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Both parties agreed that this tenancy began on January 1, 2014 and ended on June 29, 2015. Monthly rent in the amount of \$1,537.00 was payable on the first day of each month. Both parties agreed that a security deposit of \$750.00 and a pet damage deposit of \$750.00 were paid by the tenant and the landlord returned \$376.70 to the tenant. A copy of the written tenancy agreement was provided for this hearing. The landlord stated that the rental unit is the basement suite of a house, of approximately 950 square feet with two bedrooms and one bathroom. The landlord stated that the house was built in 1929 or 1930 but the entire unit was renovated in November 2013.

Both parties agreed that the tenant did not give the landlord written permission to keep her deposits. Both parties agreed that move-in and move-out condition inspection reports were completed for this tenancy. Both parties agreed that the tenant provided a written forwarding address to the landlord on June 29, 2015. The landlord confirmed that his application was filed on July 8, 2015.

The landlord seeks a monetary order of \$1,123.30 for unpaid utilities, cleaning and repairs to the rental unit. The landlord applied to offset a portion of the deposits, totaling \$1,500.00, against this monetary order. The landlord also seeks to recover the \$50.00 filing fee paid for his Application.

The landlord seeks \$190.15 total for unpaid hydro and gas utilities for May and June 2015 as well as an NSF fee. The tenant agreed that she owed the above amount to the landlord.

The landlord seeks \$189.00 to clean the rental unit after the tenant vacated. The landlord stated that the tenant's hired cleaners did not clean the rental unit adequately and that during the move-out inspection on June 29, 2015, he asked them to clean additional dirty areas and they refused to do so. The landlord noted that the dishwasher, stove, oven, baseboards, fridge and floors were dirty. The landlord provided photographs of the condition of the rental unit, which he said were taken during the move-out inspection after the tenant's cleaners cleaned the unit. The landlord noted that cleaning was required on the move-out condition inspection report and provided an invoice, dated July 3, 2015, without a cleaning description for the above amount.

The tenant disputed the landlord's claim, indicating that she hired cleaners to clean the entire rental unit. The tenant provided a copy of an invoice, dated June 29, 2015 for \$157.50 with a description of the cleaning done. The tenant also provided photographs to show the condition of the rental unit after it was cleaned. The tenant confirmed that the cleaners cleaned every area they were able to access. The tenant explained that the cleaners were unable to clean the heating vent because they could not dismantle it due to possible damage. The tenant noted that the cleaners could not clean a few marks on the oven door because they did not want to remove the door and cause damage. The tenant maintained that the cleaners vacuumed the baseboards as much as possible without dismantling it, due to possible damage. The tenant noted that the landlord was complaining about microscopic damage that was barely visible and that his photographs were close-up images to show this minute damage. The tenant testified that any cleaning issues raised by the landlord were reasonable wear and tear.

Witness ER testified that she was present during the move-out inspection on June 29, 2015 and that the tenant's cleaners did a good, professional job of cleaning. Witness ER stated that the landlord had an unreasonable standard for cleaning and unrealistic expectations. She stated that she saw the tenant taking photographs of the condition of the unit after it was cleaned on June 29, 2015. She maintained that the landlord complained that the oven glass door looked cloudy, as opposed to the new condition when the tenant moved in. Witness ER explained that the cleaners were unable to dismantle the heaters to clean inside but all the other cleaning was sufficient.

The landlord seeks \$311.79 for a bathroom sink pop-up part replacement. The landlord explained that this is the part which plugs the sink so that water can fill it. He stated that the part was not working properly as it did not pop up, it could just be removed from the sink. The tenant disputed the landlord's claim, stating that she did not realize that the pop-up part was not working, as she was able to fill the sink properly initially but not at a later time. She stated that she did not break the pop-up part and the landlord would have been responsible for this repair during the tenancy in any event. The landlord confirmed that he had the part replaced on July 1, 2015, as it had to be done right away for the new tenant who moved in around July 2 or 3, 2015. The landlord confirmed that the cost of the work was higher because it was done on a statutory holiday but the landlord did not explain why this repair was so urgent. The landlord

provided photographs of the missing pop-up part in the bathroom sink as well as an invoice for the work done.

The landlord seeks \$169.86 for materials and \$262.50 for labour to replace bathroom tiles which he said were cracked by the tenant. The landlord confirmed that on the move-in condition inspection report, nothing was indicated regarding this bathroom tile crack. The tenant explained that the crack was present when she moved in but she inadvertently omitted it from the move-in condition inspection report. Both parties provided photographs of the cracked tile area. The landlord explained that he was not informed by the tenant of the cracked tiles during the tenancy. The tenant stated that she did not think it was a big issue but she should have reported it to the landlord. The tenant noted that she did not break the tiles or cause the crack to spread further during her tenancy. She indicated that she spoke with a friend in construction, who informed her that the tiles were installed improperly and when the house settled, the crack spread further. The tenant stated that her friend advised her that the crack was a linear rather than a circular crack and therefore, it was not from dropping items on the bathroom floor. The landlord confirmed that he installed new bathroom tiles in November 2013 when the whole rental unit was renovated. The landlord provided a receipt for the materials he purchased and provided to the repair person. The landlord provided an invoice for the labour performed, stating that it was done on July 3, 2015 and that it took two days to break and replace 6 tiles in order to replace the 3 cracked tiles.

Witness ER confirmed that the tenant told her about the cracked tiles when she moved into the unit, that she noticed the damage approximately halfway through the tenant's tenancy, that the tenant covered the area with a bath mat and that the crack was a long line that was not straight, covering about three tiles. Witness ER questioned how the tenant could have damaged the tiles by dropping something onto it because the crack was spread evenly between the tiles.

### Analysis

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$190.15 for unpaid utilities and an NSF fee for May and June 2015, as the tenant agreed to this amount during the hearing.

I dismiss the landlord's claim of \$189.00 for general cleaning of the rental unit. I find that the tenant performed sufficient cleaning of the rental unit by hiring professional cleaners. The tenant provided a detailed invoice with a description regarding the work performed, as well as photographs to show the condition of the unit. The landlord failed to provide sufficient photographic evidence to show that the unit was dirty beyond reasonable wear and tear. I find that the landlord was attempting to impose an unreasonable standard for cleaning by focusing on microscopic dirt that is reasonable wear and tear.

I award the landlord \$100.00 to replace the bathroom sink pop-up part. The landlord provided a receipt for the work performed. I find that no damage was noted on the move-in condition inspection report regarding this part. The tenant agreed that she was unable to fill the sink later during her tenancy and she failed to report this issue to the landlord during the tenancy. Therefore, I find that the tenant is responsible for this damage. However, I find that the amount charged by the landlord is excessive, particularly given the landlord's failure to show the urgency in replacing this part on a statutory holiday where the charges are additional. I find that the \$100.00 is a reasonable amount for the work done.

I award the landlord \$432.36 for replacing the broken tiles in the bathroom. The landlord provided receipts for the labour and materials. I find that no damage was noted on the move-in condition inspection report regarding the cracked tiles. The tenant agreed that the tiles were cracked and she failed to report this issue to the landlord during the tenancy. The tenant failed to provide documentary evidence from her friend who advised her that the crack was due to improper installation by the landlord. Therefore, I find that the tenant is responsible for this damage.

As the landlord was only partially successful in his Application, I find that he is not entitled to recover the \$50.00 filing fee from the tenant.

### Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Although the landlord did not return the tenant's full deposits, I find that the landlord applied to retain the deposits within 15 days of the end of the tenancy and the tenant providing a written

forwarding address. Therefore, I find that the tenant is not entitled to double the value of her security deposit from the landlord.

I find that the tenant is not entitled to recover double the value of her pet damage deposit. A pet damage deposit can only be used for damage caused by a pet to the residential property. The landlord stated that the damage and cleaning costs may have been incurred due to pet damage. The tenant noted that her two dogs were very small at eight pounds and two pounds, and could not have caused the bathroom floor tile damage. The tenant did not provide documentary evidence of this fact from a qualified person. However, the landlord also applied for cleaning costs, including improper cleaning of the floors, vents and baseboards, which may have been due to pet hair. Although the landlord was unsuccessful in obtaining compensation for his cleaning costs, the landlord applied for them in good faith. Therefore, I find that it is possible that some of the damage or cleaning costs claimed by the landlord may have been due to the tenant's pets.

The landlord continues to hold the tenant's deposits, totalling \$1,500.00. Over the period of this tenancy, no interest is payable. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$722.51 from the tenant's deposits in partial satisfaction of the monetary award. I order the landlord to return the remaining \$400.79 from the deposits to the tenant.

### Conclusion

I order the landlord to retain \$722.51 from the tenant's deposits in full satisfaction of the monetary award.

I issue a monetary order in the tenant's favour in the amount of \$400.79 against the landlord as follows:

Item	Amount
Tenant's Security and Pet Damage Deposits	\$1,500.00
Landlord's Unpaid Utilities and NSF Fee for May and June 2015	-190.15
Landlord's Bathroom Sink Pop-up Part Replacement	-100.00
Landlord's Bathroom Tile Replacement	-432.36
Minus Portion already returned to Tenant	-376.70
<b>Total Monetary Award</b>	<b>\$400.79</b>

The tenant is provided with a monetary order in the amount of \$400.79 in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application to recover the \$50.00 filing fee is dismissed without leave to reapply. 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: December 22, 2015

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Residential Tenancy Branch

