



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MDSD, MNSD & FF

### Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$282.86
- b. An order to retain the balance of the security deposit
- c. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$850
- b. An order that the tenant recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain the balance of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

- d. Whether the tenant is entitled to a monetary order and if so how much?
- e. Whether the tenant is entitled to recover the cost of the filing fee.

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on June 1, 2012. The rent is \$850 per month payable on the first day of each month. The tenant paid a security deposit of \$425 at the start of the tenancy. The tenancy ended on July 31, 2015. The tenant provided the landlord with her forwarding address in writing on August 18, 2015.

On July 31, 2015 the landlord returned \$200 of the security deposit. The landlord retained \$225 of the security deposit.

Landlord's Application:

This is a complicated claim. While the landlord was able to establish many of her claims the landlord failed to conduct a Condition Inspection and failed to prepare a Condition Inspection Report at the end of the tenancy as required by the Residential Tenancy Act. The effect of this failure is to extinguish the landlord's right to make claims against the security deposit for **damages** to the rental unit. The landlord retains the right to make claims against the security deposit for other claims. Further, the landlord retains the right to claim against the tenant but it is subject to the tenant's right to claim the return of double of the security deposit. .

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Policy Guideline #1 includes the following:

**“MAJOR APPLIANCES**

1. At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.
2. If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it."

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I determined the landlord is entitled to \$50 for the cost of a garage door opener. The tenant acknowledged responsibility for this claim as it was in her purse when her purse was stolen. This is not a damage claim and can be applied against the security deposit.
- b. The landlord claimed \$165 for the cost of cleaning (11 hours x \$15 per hour = \$165). I determined the tenant failed to sufficiently clean the balcony, the stove and the carpets. However, I determined the landlord does not have a claim against the tenant for cleaning under the refrigerator as it did not have wheels. I determined the landlord is entitled to \$140 for this claim.
- c. I determined the landlord is entitled to \$24.66 for the cost of replacing light bulbs and damaged items.
- d. I determined the landlord is entitled to \$25 for the cost of the carpet cleaner and machine.
- e. I determined the landlord is entitled to \$15 for the cost of cleaning supplies.

The landlord failed to conduct a Condition Inspection at the end of the tenancy and failed to prepare a condition inspection report as required by the Residential Tenancy Act. Section 38(5) provides as follows:

38(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

The effect of this section in the context of the landlord's claim is that the landlord is entitled to apply the \$50 claim for the lost garage door opener against the deposit leaving a balance held by the landlord of \$175. However, while the landlord is entitled

to claim for the cost of cleaning and damage, that claim is subject to the tenant's claim against the deposit.

I ordered that the landlord's claim of \$50 for the cost of the garage door opener be deducted from the security deposit. I determined the landlord has established a claim against the tenant in the sum of \$204.66 plus \$50 for the cost of the filing fee for a total of \$254.66.

#### Tenant's Application:

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenant (obtained prior to the filing of these claims) or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

#### Analysis

The tenant paid a security deposit of \$425 at the start of the tenancy. The landlord returned \$200 on July 31, 2015 when the tenancy ended leaving a balance held by the landlord in the sum of \$225. I determined the tenancy ended on July 31, 2015. I further determined the tenants provided the landlord with their forwarding address in writing on August 18, 2015. The landlord filed a claim within the 15 day period. However, as the landlord failed to conduct a Condition Inspection and prepare a Condition Inspection report at the end of the tenancy the landlord is disentitled to make a claim in relation to damage to the unit. The landlord is entitled to make a claim for the loss of the garage door opener in the sum of \$50 which reduces the security deposit held by the landlord to \$175.

The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenant (obtained prior to the filing of these applications) and the landlord's right to file a claim against the security deposit for damages was extinguished. As a result I determined the tenant has established a claim against the landlord for double the security deposit held by the landlord in the sum of \$350 ( $\$175 \times 2 = \$350$ ).

#### Monetary Order and Cost of Filing fee

I determined the tenant has established a claim against the landlord in the sum \$350 plus the sum of \$50 in respect of the filing fee for a total of \$400.

The tenant has established a claim against the landlord in the sum of \$400. The landlord has established a claim against the tenant in the sum of \$254.66. After setting off one claim against that of the other I order that the landlord pay to the tenant the sum of \$145.34.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion:

In summary I determined the landlord has established a claim against the tenant in the sum of \$254.66. I determined the tenant has established a claim against the landlord in the sum of \$400. After setting off one claim against that of the other I ordered that the landlord pay to the tenant the sum of \$145.34.

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 08, 2015

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Residential Tenancy Branch

