



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNSD, MND, MNDC, 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, repairs, and the filing fee. The tenant applied for a monetary order for the return of double the security deposit, return of rent, compensation for an inoperative oven and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to a monetary order? Is the tenant entitled to the return of double the security deposit, return of rent and compensation?

### **Background and Evidence**

The tenancy started on, September 01, 2014 for a fixed term of nine months with an effective end date of May 31, 2015. The tenancy would continue on a month to month basis at the end of the fixed term. The tenant moved out on April 28, 2015, which was prior to the end date of the fixed term. The monthly rent was \$1,300.00 due on the first of the month. Prior to moving in, the tenant paid a security deposit of \$650.00.

The landlord stated that the tenant moved out on April 28, 2015, without giving any notice. The tenant agreed that he had not personally provided written notice to the landlord but believed that his roommate did. The landlord denied having received a written notice to end the tenancy from the roommate.

The tenant had provided postdated rent cheques to the landlord and the landlord cashed the rent cheque that was given to him for the month of May 2015. The tenant has applied for the return of his portion of the rent for May in the amount of \$700.00.

The tenant stated that the oven did not work at the start of tenancy and it took the landlord one month to replace it. The tenant has applied for compensation in the amount of \$200.00 for the loss of use of the oven. The landlord stated in his written submission that he informed the tenant at the start of tenancy that the oven was inoperative and that he would not be replacing the oven. The landlord stated that the stove top worked and was the only cooking appliance provided to the tenant.

The landlord also stated that because the tenant's roommate needed an oven for baking classes, the landlord replaced the oven at a cost of \$800.00, one month into the tenancy, at the roommate's request.

The tenant stated that on May 15, 2015, he sent his forwarding address to the landlord by registered mail. The tenant filed a copy of the tracking slip. The landlord denied having received the tenant's forwarding address. The tenant is claiming \$1,300.00 for the return of double the security deposit. The tenant is also claiming \$50.00 for the recovery of the filing fee he paid.

The landlord stated that the tenant left the unit in an unclean condition. A closet door and drawer was damaged. The landlord filed photographs of the condition of the unit at the end of tenancy and an invoice for the cost he incurred for cleaning and repairs. The landlord is claiming \$475.00 for cleaning, \$180.00 to repair the closet door and \$75.00 to repair the drawer. The total amount of the invoice including tax is \$817.60. The landlord is also claiming the return of the filing fee of \$100.00.

### **Analysis**

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

Based on the evidence and testimony of both parties, I find that the landlord has proven that the rental unit was left in a dirty condition and that the closet door and drawer were damaged at the end of tenancy. The evidence of the landlord includes photographs and an invoice for \$817.60. I find that the landlord has proven his claim and is therefore also entitled to the recovery of the filing fee of \$100.00. Overall the landlord has established an entitlement of \$917.60.

#### **Tenant's application:**

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the evidence and sworn testimony of the tenant, I find that the tenant provided the landlord with his forwarding address by registered mail on May 15, 2015 and the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$650.00 and is obligated under section 38 to return \$1,300.00 which is double the base amount of the security deposit.

Based on the testimony and written submissions of both parties, I accept the landlord's testimony that the oven was inoperative prior to the start of tenancy and that the landlord informed the tenant that he would not be replacing it. If the tenant believed that the oven was a

service provided for and included in the rent, the tenant had the option of filing an application for dispute resolution at the time the appliance was inoperative.

Since I accept the landlord's testimony that he informed the tenant of the inoperative oven prior to the start of tenancy and informed the tenant that he would not be replacing the oven and since the tenant chose not to apply for dispute resolution during the tenancy, I find that the tenant is not entitled to compensation.

Policy Guideline 30 addresses states as follows:

If the tenant wishes to vacate the premises at the end of the fixed term, but is not otherwise required to vacate the premises at the end of the fixed term, the tenant must give notice of intent to vacate the premises in the rental period prior to the rental period in which the tenant wishes to vacate the premises and not less than one month prior to the end of the fixed term.

In this case the tenant ended the fixed term tenancy prior to the end date of the tenancy, without giving the landlord written notice to do so. In addition the landlord testified that the tenant returned the keys on May 05, 2015 and the landlord did not find a replacement tenant for that month.

Based on the above I find that the tenant is not entitled to his claim for the return of rent for May 2015.

Since the tenant has proven his claim, he is entitled to the recovery of the filing fee of \$50.00. Therefore, the tenant has established a claim for \$1,350.00.

Overall the landlord has established a claim of **\$917.60** and the tenant has established a claim for **\$1,350.00**. I will use the offsetting provisions of section 72 of the *Act* to offset the landlord's claim against the tenant's claim and I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$432.40**. 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 **\$432.40**.

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: March 11, 2016

