



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MNSD MNDC FF

### Introduction

This hearing dealt with monetary applications by the landlord and the tenant. Both the landlord and the tenant participated in the teleconference hearing.

At the outset of the hearing, the tenant confirmed that he received the landlord's application. The landlord stated that they did not receive the tenant's application. The tenant provided evidence that he mailed the hearing package for his application to the landlord via registered mail sent September 11, 2015. I therefore found that the landlord was deemed served with the tenant's application as of September 16, 2015. As the tenant's application was in regard to the security deposit, which the landlord was also claiming in their application, I found that the landlord would not be unduly prejudiced by not having the tenant's application before her. I therefore proceeded with both applications.

Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?  
Is the landlord entitled to monetary compensation as claimed?

### Background and Evidence

The tenancy began on February 1, 2013. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$430.00. On January 31, 2013 the tenant and an agent for the landlord did a move-in inspection and completed the condition inspection report.

The tenancy ended on August 25, 2015. The landlord and the tenant did not complete a move-out inspection. The tenant emailed the landlord his forwarding address on August 27, 2015. The landlord returned \$380.00 of the security deposit on or about September 1, 2015. The landlord applied on January 7, 2016 to keep the security deposit.

#### *Tenant's Claim*

The tenant stated that the landlord made their own decision to withhold \$50.00 of the security deposit without the tenant's consent. The tenant has claimed \$480.00, representing double the security deposit less the \$380.00 that was returned.

#### *Landlord's Claim*

The landlord stated that on August 25, 2015 they attended the rental unit at 11:00 a.m. to do the final inspection, but the tenant was not ready. The landlord stated that they returned at approximately 1:45 p.m. but the unit was still not clean. The landlord stated that they had another appointment and told the tenant they would return later, but the tenant replied that he would be on the ferry by then.

The landlord stated that the bathroom was a mess, the toilet bowl was completely black, and there was hair all over; there were holes in the walls in the back bedroom; there was a moth infestation; the blinds were all grimy with grease; and there was a gash in the dining room floor. The landlord stated that they did not see two cracked windows at first because the curtains were closed or the blinds were down. The landlord has claimed \$99.00 for two cracked windows; \$672.00 for painting of scuffed and damaged walls; and \$180.00 for nine hours of cleaning, including the oven, the bathroom, the windows and the blinds. The landlord submitted photographs of the cracked windows and dirty oven; invoices; and a written statement from a witness who indicated that he spent two and a half to three hours cleaning the unit after the tenant vacated.

The tenant stated that he was available to do the move-out inspection at 2:00 p.m. on August 25, 2015. The tenant stated that at that time the landlord said there would be no problem returning the full security deposit. The tenant stated that he was not served with Final Opportunity to Schedule a Condition Inspection form.

The tenant stated that there was a stain in the toilet that could not be removed. The tenant stated that the bathroom was clean. The tenant stated that he did not recall saying he would be on the ferry, and he did not recall breaking any windows.

## Analysis

### *Tenant's Application*

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the deposit or make an application to keep the deposit. If the landlord fails to do so, then the tenant is entitled to recovery of double the security deposit.

In this case, the tenancy ended on August 25, 2015, and the tenant provided his forwarding address in writing on August 27, 2015. The landlord returned \$380.00 of the deposit within 15 days but failed to return \$50.00 or make an application to keep that amount within the required timeframe. I therefore find that the tenant has established a claim for recovery of double the balance of the security deposit in the amount of \$100.00. The full amount of the original deposit is not doubled, as the landlord returned \$380.00 in time.

### *Landlord's Application*

I accept the landlord's evidence that there were two cracked windows at the end of the tenancy; however, the landlord did not provide evidence of the age of the windows and I cannot determine depreciation or whether the cracks occurred due to age. I therefore grant the landlord a nominal award of \$25.00 for the cracked windows.

The landlord has provided insufficient evidence to clearly establish that there were holes in the walls or the need for further repairs and painting. However, the tenant did not adequately dispute this part of the landlord's claim. I find it appropriate to grant the landlord a nominal award of \$100.00 for this portion of their claim.

In regard to the issue of cleaning, the landlord gave testimony regarding the condition of the unit, but did not provide sufficient evidence to fully establish the condition of the unit. I accept the tenant's submission that the bottom of the toilet was stained, as it appears so even in the landlord's photograph. However, the tenant's response to all of the cleaning the landlord claimed was needed was not complete. I accept as credible the written statement from the landlord's witness who indicated that he spent two and a half to three hours cleaning the unit after the tenant vacated. I therefore find it appropriate to grant the landlord \$60.00 for three hours of cleaning.

### *Filing Fees*

As both applications were only partially successful, I decline to award either party recovery of the filing fee for the cost of their applications.

Conclusion

The tenant is entitled to \$100.00. The landlord is entitled to \$185.00. I grant the landlord an order under section 67 for the balance due of \$85.00. 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: April 11, 2016

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Residential Tenancy Branch