



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, 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 damages to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not attend. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Has the Tenant left the unit unclean and with damages beyond reasonable wear and tear?

Is the Landlord entitled to liquidated damages?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on July 1, 2015 for a fixed term to end June 30, 2016. The Tenant gave a month’s notice and the tenancy ended on February 29, 2016. Rent of \$885.00 was payable monthly. At the outset of the tenancy the Landlord collected \$442.50 as a security deposit. Smoking inside the unit is allowed. Paragraph 5 of the tenancy agreement provides that the Tenant will pay \$500.00 as liquidated damages for costs of re-renting the unit if the tenancy ends before the fixed term. The Parties mutually conducted a move-in and move-out inspection and the Tenant did not agree with the move-out report of damages. Subsequent to the Tenant moving out of the unit, the Landlord immediately re-rented the unit for \$940.00 per month.

The Landlord states that \$500.00 is the industry standard for the cost of re-renting a unit and the Landlord claims this amount as liquidated damages.

The Tenant left the unit unclean and with damages and the Landlord claims as follows:

- \$262.45 for the cost of cleaning the carpets that were left dirty with stains;
- \$42.00 for the cost of removing garbage left behind by the Tenant;
- \$315.00 for the cost of cleaning the unit;
- \$60.00 for the costs of cleaning 3 sets of drapes left dirty with water stains;
- \$200.00 for the cost of painting the unit that was left smelling of smoke and that was last painted in August 2012;
- \$31.50 for the cost of reinstalling closet doors; and
- \$111.98 for the cost of repairing the bedroom door.

The Landlord provided invoices for all the costs claimed and photos of the unit.

### Analysis

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. Policy guideline #40 sets the useful life of interior paint at 4 years. The Landlord's evidence of when the walls were last painted indicates that nearly 4 years had passed since the last painting. Further as the Tenant was allowed to smoke in the unit I find that damage from the smoke over the short tenancy can only be considered reasonable wear and tear in the circumstances. As a result I find that the cost to paint the walls was not incurred as a result of any act or negligence of the Tenant. I note that the photos show one wall with two screw holes and a wall dent that appears similar to a dent from a door knob however there is no indication in any of the invoices that any cost was incurred for any wall patching or filling. I therefore dismiss the claim for painting the unit. As the photos of the curtains do not show any damage from any spills and appear reasonably clean I dismiss the costs claimed for cleaning them.

Given the photos of the carpets, the floor, the kitchen appliances, the garbage, including the unidentified lumps collected in a bag, the closet doors and the bedroom door, I find that the Landlord has substantiated the costs claimed for cleaning the unit, removing the garbage, installing the closet doors and repairing the bedroom door in the total amount of **\$762.93**.

Although the amount being claimed as liquidated damages seems excessive in relation to the amount of rent being paid, based on the undisputed evidence of the Landlord of industry standard costs to re-rent, I find that the Landlord is entitled to **\$500.00**.

As the Landlord's application has had merit I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,362.93**. Deducting the security deposit plus zero interest of **\$442.50** from this amount leaves **\$920.43** owed by the Tenant to the Landlord.

#### Conclusion

I Order the Landlord to retain the security deposit plus interest of \$442.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$940.43**. 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 22, 2016

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Residential Tenancy Branch

