



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

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

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenants with the notice of hearing package via Canada Post Registered Mail on March 14, 2016. Both parties also confirmed that the landlord served to the tenants the amended application for dispute with the landlord's submitted documentary evidence via Canada Post Registered Mail on June 22, 2016. Both parties confirmed that the tenants served their submitted documentary evidence via Canada Post on June 17, 2016. I accept the undisputed affirmed testimony of both parties and find that both parties have been properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. The tenants are deemed to have received the packages 5 days later as per section 90 of the Act.

At the outset it was clarified with both parties that litigation costs are not recoverable under the Act. Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs are dismissed. The landlord's monetary claims as per the submitted monetary worksheet with the detailed list showing are dismissed.

- |    |         |                                     |
|----|---------|-------------------------------------|
| 5) | \$41.58 | Canada Post Registered Mail         |
| 6) | \$4.73  | Canada Post Signature Required Cost |

17)	\$33.60	Notary Affidavit Fee
18)	\$33.60	Notary Affidavit Fee
19)	\$33.60	Notary Affidavit Fee
20)	\$33.60	Notary Affidavit Fee
21)	\$46.31	Canada Post Registered Mail
22)	\$35.50	Printing 355 pages of documents
	\$15.00	Printing 20 color photos

The hearing shall proceed on the remaining listed items for monetary claim.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

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

Both parties confirmed that this tenancy began on October 26, 2015 on a fixed term tenancy as shown by the submitted copy of the signed tenancy agreement dated October 26, 2015. The monthly rent was \$2,175.00 and a security deposit of \$1,000.00 was paid. A condition inspection report for the move-in was completed on November 7, 2015 by both parties. An incomplete condition inspection report was made by the landlord on March 12, 2016.

The landlord seeks an amended monetary claim of \$4,925.17 which consists of:

\$26.88	Berger Lamp Oil
\$12.51	Stronger Cleaning Supplies
\$47.03	Nature's Miracle Antimicrobial
\$157.50	Fee for Comprehensive Estimate
\$175.00	3.5 hrs of cleaning- Microwave Fan
\$125.00	2.5 hrs of cleaning- Kitchen Cabinets with vinegar solution
\$50.00	1 hr of cleaning- Refrigerator and Stove with vinegar solution
\$150.00	3 hrs of cleaning (Microbial Agent)- all areas (walls, floors and doors)

\$250.00	4 hrs of cleaning- wiping all hard surfaces with vinegar solution
\$150.00	4 hrs of cleaning- soft furnishings (rug and draperies)
\$1,812.50	Loss of Rental Income (March10-April3) prorated at \$72.50/day
\$1,968.75	Painting

The landlord has submitted in support of the claim:

- Receipt from A.K. for Berge Lamp Oil dated March 11, 2016
- Receipt from Save-On-Foods for Vinegar Bleach dated March 12, 2016
- Receipt from Bosley's for Antimicrobial Solution dated March 14, 2016
- Receipt from ServPro for Comprehensive Inspection dated March 22, 2016
- Receipt from Modern Image Painting for paint quote dated April 4, 2016
- Copy of Cancelled Cheque for Modern Image Painting dated April 15, 2016
- Affidavit of L.E. dated June 20, 2016 which states that she attended the rental premises on March 11, 2016..."Upon entering the condo I was met with the overwhelming odour of curry. It was everywhere; the open windows did not help at all..."
- Affidavit of R.S. dated June 17, 2016 which states that she attended the rental premises on March 12, 2016..."A tenant had recently moved out, and D. asked me, when I entered the unit, whether anything seemed "out of order." I commented on the fact that there was a strong odour of Asian spices through the apartment that was immediately apparent upon entering."
- Affidavit of S.A. dated June 20, 2016 which states that the he attended the rental premises on March 12, 2016..."Upon opening the front door of the apartment I was immediately hit by a strong curry odour that came from eh inside of the apartment. We entered the apartment and the smell remained potent throughout the apartment except the bedroom..."
- Affidavit of M.A.J. dated June 17, 2016 which states that she attended the rental premises on March 19, 2016 "and found the condition as follows: The air is cloying and pungent with an odour of spices especially in the kitchen...The malodour present in the above noted Suite on the date viewed was such that I would not consider it acceptable for rental purposes."
- A Quote from Modern Image Painting dated March 16, 2016 which states, "Job Request: Client would like the unit evaluated. Strong odor evident due to spices used in cooking. The unit is clean so it seems that the odour has seeped into the walls...."

- An Estimate from On Side Restorations dated March 21, 2016 which states, “A site visit was conducted at the above noted address, after entering from the hall, a pungent odor was noticed in the unit, it appeared to be from a strong cooking spice, the soft goods had no smell to them, it seems logical that the odor has penetrated the paint of the walls and ceiling of the unit, as with any strong odor, the best approach to eliminate the smell is to smoke seal the walls and ceiling and repaint the walls and ceiling.
- A detailed inspection by ServPro dated March 18, 2016 which consists of 18 pages and 11 photographs detailing an estimate for fogging the unit. It states, ...Based upon the inspection conducted on March 17, 2016 a curry odour was present throughout the unit...

The landlord provided affirmed testimony that at the end of tenancy the tenants left the rental unit clean, but with a strong spice odor. The landlord stated that a strong odor relating to cooking spices was present and that the landlord had made attempts at traditional cleaning which proved unsuccessful. The landlord stated that Berger Oil Lamp and an “Antimicrobial” Cleaning Solution were used without success and that painting was required in conjunction to rid the rental of the odor. The tenants provide affirmed testimony disputing the landlords claim stating that no odor was left at the end of the tenancy.

The tenants disputed the landlord’s claims stating that he and his brother had both attended the rental premises on March 12, 2016. The tenants stated that the landlord had failed to complete a condition inspection report for the move-out on March 12, 2016. The tenants have provided copies of:

- 4 pages of text messages between the landlords and the tenants
- 2 pages of email from the landlord to the tenants
- 22 photographs of the rental unit at the end of tenancy

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age. The landlord has claimed that the tenants vacated the unit leaving it clean, but with a strong spice odor. The tenants have disputed this claim. The landlord has provided evidence in the form of 4 separate affidavits as well as 3 quotes from 3 different companies. All parties reference “a strong odor evident due to spices used in cooking”, “a pungent odor was noticed in the unit, it appeared to be from a strong cooking spice”, “a strong curry odour was present throughout the unit”, “Upon entering the condo I was met with the overwhelming odour of curry”, “I commented on the fact that there was a strong odour of Asian spices throughout”, “Upon opening the front door of the apartment I was immediately hit by a strong curry odour that came from the inside of the apartment”, “The malodour present in the above noted Suite on the date viewed was such that I would not consider it acceptable for rental purposes”. The tenants have disputed the landlord’s claims stating that they were never notified of any odour issues.

Based upon the above noted evidence from both parties, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants. The landlord has provided sufficient evidence to satisfy me that the tenants vacated the rental unit leaving it with a strong spice odor which caused the landlord’s rental unit to be un-rentable due to the odour. The landlord incurred costs to make the unit habitable for rental. As such, I find that the landlord has established a claim for the costs claimed of \$4,925.17 as noted in the landlord’s monetary claim worksheet.

The landlord applied to keep the tenant’s \$1,000.00 security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I issue a monetary order in the landlord’s favour in the amount of \$4,025.17 under the following terms:

Item	Amount
Monetary Award	\$4,925.17

Offset Security Deposit	-1,000.00
Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$4,025.17</b>

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: August 11, 2016

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Residential Tenancy Branch