



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      OPR, MNR, MNDC, MNSD, 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. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent and utilities - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed during the hearing that the tenancy ended before the Landlord made its application. As a result I dismiss the Landlord's claim for an order of possession.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Was the Landlord's right to claim against the security deposit extinguished?

### Background and Evidence

The tenancy started on January 27, 2016 and ended on May 7, 2016. Rent of \$1,200.00 was payable on the first day of each month. The tenancy agreement provides that the Tenant pays 1/3 of gas, electricity and water. At the outset of the tenancy the Landlord collected \$600.00 as a security deposit. The Parties mutually conducted a move-in inspection with a report completed and a copy provided to the Tenant. The Landlord did not offer a move-out inspection to the Tenant. The Landlord received the Tenant's forwarding address on May 7, 2016.

The Landlord states that the Tenant failed to pay his portion of the reconciliation amount contained in the gas bill of April 2016. The Landlord does not know when the last reconciliation date occurred and has not calculated the claimed amount based on that last reconciliation date. The Landlord claims \$124.53. The Tenant disputes this amount for gas and states that he paid the utility costs when and as they were presented by the Landlord up to his departure date. The Tenant does not dispute the Landlord's claimed amount of \$47.86 for the electricity and \$110.12 for the water.

The Landlord states that the Landlord served the Tenant with two notices to end tenancy with the last notice requiring the Tenant to move out by May 11, 2016. The Landlord states that although the Tenant moved out prior to that date the Tenant owes the full month's rent as the Tenant did not give the Landlord any notice that he was moving out. The Landlord states that she did not try to rent the unit while the Tenant was in place because he was not communicating with the Landlord. The Landlord states that the Tenant was not informed at any time that the Landlord would be seeking a replacement tenant and the Landlord did not advertise for a replacement tenant until May 20, 2016. The Landlord states that a new tenant was found within 2 days but that the tenancy did not start until June 1, 2015 with a rental rate of \$1,250.00. The Landlord claims \$1,200.00 in unpaid rent. The Tenant does not dispute rent for the period May 1 to 7, 2016 inclusive.

The Landlord states that the Tenant left the unit unclean and so smelly that the walls had to be washed. The Landlord claims \$100.00 for the costs of cleaners for the unit and provides their invoice of \$131.00. This invoice sets out the cleaning tasks. The Landlord provides photos. The Landlord states that a move-out report was completed by the Landlord however the Landlord did not provide a copy of that report. The Tenant states that he did not clean under the appliances but otherwise left the unit clean. The Tenant states that the oven was self-cleaning and that the Tenant used the self-cleaning function at the end of the tenancy followed with a damp wipe. The Tenant states that the photos only show close ups of hairs that could easily be missed.

### Analysis

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. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss.

As the Landlord did not calculate the Tenant's portion of the reconciled costs of gas from the previous reconciliation date I find that the Landlord has not substantiated the amount claimed and I dismiss this claim. Given the Tenant's agreement on costs claimed for electricity and water I find that the Landlord has substantiated its claims to **\$47.86** and **\$110.12**.

The Landlord's photos of the unit are of little help given the close up nature of the photos and the lack of context. Where items such as dust particles or scuff marks are portrayed they appear to be minor. Given the Tenant's evidence that the fridge and stove were not moved out for cleaning, accepting the Landlord's undisputed evidence of smell in the unit and a mattress stain, but otherwise accepting the Tenant's evidence that the remaining cleaning was done I find that the Landlord has only substantiated a nominal amount of **\$50.00** for the cleaning that was not reasonably completed.

The tenancy was ended by the Landlord and rent was no longer payable after the Tenant moved out of the unit. Given the Tenant's agreement on rent I find that the Landlord has therefore substantiated rent for the period May 1 to 7, 2016 inclusive in the amount of **\$280.00** ( $1,200/30 \times 7$ ). I do not accept that the unit was so unclean that it caused any lost rental income. As the Landlord did nothing to advertise the unit until much after the tenancy ended and considering the short time it took to find a new tenant, I find that the Landlord failed to take reasonable measures to mitigate any lost rental amounts and I dismiss the claim for remaining rents to the end of May 2016. As the Landlord's application for the above claims did have merit I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$587.98**.

Section 36 of the Act provides that the right of the landlord to claim against a security deposit for damage to residential property is extinguished if the landlord does not offer tenant 2

opportunities for a move-out inspection. Based on the Landlord's evidence that no offer for a move-out inspection was given to the Tenant I find that the Landlord's right to claim against the security deposit was extinguished at move-out and that the Landlord was required to return the security deposit to the Tenant.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord could not retain the security deposit pending its claim for damages and as the Landlord did not return the security deposit within 15 days of the end of the tenancy or receipt of the Tenant's forwarding address I find that the Landlord must now pay the Tenant double the security deposit in the amount of **\$1,200.00**. Deducting the Landlord's entitlement of **\$587.98** from this amount leaves **\$612.02** to be returned to the Tenant.

#### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$612.02**. 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: November 10, 2016

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Residential Tenancy Branch