



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

matter regarding Mainstreet Equity Group  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

The Tenants did not attend the hearing. I accept the Landlord's evidence that each Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenants are deemed to have received the Materials. The Landlords were given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

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

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on June 1, 2015 and ended on July 31, 2016. At the outset of the tenancy the Landlord collected \$400.00 as a security deposit. The Parties mutually conducted a move-in inspection with completed condition report copied to the Tenants. The Landlord states that no move-out inspection was conducted with the Tenant as the Tenant did not provide its forwarding address until August 30, 2016. The Landlord usually makes an offer for an inspection when keys are returned however in this instance no offer was made. He Tenant did leave the keys but the Landlord does not indicate when this occurred. The Landlord believes that its move-out instruction sheet should have served as an offer. It is noted that no offer to conduct an inspection is set out on that sheet. The Landlord believes that a notice to inspect the unit for June 22, 2016 was an offer for a move-out inspection. The Landlord also states that a move-out inspection was conducted on July 31, 2016. The Landlord provides the report for this inspection dated July 31, 2016.

The Landlord states that the Tenant failed to leave the unit reasonably clean and undamaged and claims \$400.00. The Landlord did not provide a monetary order worksheet setting out the details of this monetary amount. The Landlord did provide a charge analysis sheet and the charges set out on this sheet are for cleaning various areas of the unit including garbage removal for a total charge of \$250.00 and a charge of \$150.00 in relation to the kitchen sink/countertop. The Landlord provides copies of the condition reports and photos. The Landlord initially states that Agent CM who is a paid employee did the work. Agent CM does not know if employees are paid the charges set out in the charge analysis sheet. The Landlord states that the kitchen counter was new at the onset of the tenancy. The Landlord provides an invoice for the costs claimed on the counter.

### Analysis

Section 36(2) provides that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer 2 opportunities for an inspection. The Landlord's evidence of a

move-out inspection done on July 31, 2016 contradicts its evidence that the move-out inspection was conducted June 22, 2016. The Landlord provided no credible evidence of any offer to conduct a move-out inspection and I note that the move-out checklist is not an offer to conduct an inspection. For this reason I find that no offers were made for a move-out inspection and that the Landlord's right to claim against the security deposit for damages to the unit was extinguished at the end of the tenancy.

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.

Policy Guideline #17 provides as follows:

Return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

As the Landlord's right to claim against the security deposit was extinguished, the only option for the Landlord was to return the security deposit to the Tenants. The Landlord could still pursue an application claiming damages. As the Landlord did not return the security deposit after receipt of the forwarding address I find that the Landlord must now pay the Tenant **\$800.00** plus zero interest.

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. The party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established.

The Landlord provided no evidence that the costs claimed for cleaning were paid to any person. I also note that the photos depict only a minor amount of cleaning under the appliances. I consider that the amount claimed for this cleaning is exaggerated. For these reasons I find that the Landlord has not substantiated that the costs were actually incurred or the extent of loss established. I therefore dismiss the claims for cleaning costs. Given the photo and the invoice for its repair I find that the Landlord is entitled to **\$150.00** for the repair of the counter.

As the Landlord breached the Act in relation to the security deposit I decline to award recovery of the filing fee. Deducting the Landlord's entitlement of **\$150.00** from the **\$800.00** owed to the Tenant leaves **\$650.00** owed the Tenants.

#### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$650.00**. 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: March 10, 2017

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Residential Tenancy Branch