



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the Landlords' Application for Dispute Resolution (the "Application") filed on June 19, 2017 for an Order of Possession. The Landlord also applied for a Monetary Order for: damage to the rental unit; unpaid rent; to keep the Tenant's security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"); and, to recover the filing fee from the Tenant.

One of the Landlords and the Tenant appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlords' Application by registered mail and their documentary and photographic evidence served prior to the hearing. The Tenant also confirmed that he had not submitted any evidence prior to this hearing.

The hearing process was explained and no questions as to how the hearing would be conducted were asked. Both parties were given a full opportunity to present evidence, make submissions to me, and cross examine the other party on the evidence provided.

At the start of the hearing, the parties confirmed that the tenancy had ended pursuant to a notice to end tenancy and that the Landlord had received possession of the rental unit. Therefore, I dismissed the Landlords' request for an Order of Possession as this is no longer required.

### Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for unpaid rent?
- Are the Landlords entitled to damages to the rental unit?
- Can the Landlords keep the Tenant's security deposit in partial satisfaction of their monetary claim?

### Background and Evidence

The parties agreed that this tenancy started on April 21, 2017 on a month to month basis. Rent under a signed tenancy agreement was payable by the Tenant in the amount of \$625.00 on the last day of each month. The Tenant paid the Landlords a security deposit of \$312.50 which the Landlords retain in trust. The tenancy agreement provides for a \$25.00 fee for late payment of rent or dishonored cheques.

The parties completed a move-in Condition Inspection Report (the "CIR") at the start of the tenancy which was provided into evidence.

The Landlord testified that the Tenant failed to pay full rent on May 31, 2017. As a result, on June 3, 2017, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"). The Notice was provided into evidence and has a vacancy date of June 13, 2017.

The Tenant confirmed receipt of the 10 Day Notice. The parties confirmed that the Tenant vacated the rental unit pursuant to the vacancy date on June 13, 2017. The Landlord testified that shortly after the tenancy ended, he met with the Tenant at the rental unit to complete the move-out CIR but the Tenant failed to sign it, only providing his forwarding address. The move-out CIR was provided into evidence.

The Tenant confirmed that the parties had met at the rental unit to do a move-out CIR, but this took place on June 13, 2017. During that time the Landlord asked the Tenant to sign over his security deposit which the Tenant refused to do, and therefore he did not sign it.

The Landlord referred to text message evidence which he provided into evidence to show the arrangements he had made with the Tenant to schedule the move-out condition inspection a few days after the tenancy had ended. I noted in that evidence, the Tenant writes that he has taken pictures of the rental unit at the end of the tenancy.

The Landlord claims for unpaid rent of \$625.00 for May 2017 and the \$25.00 fee for the late payment of rent. In addition, the Landlord claims \$17.91 for a screen on the front door which he had to replace due to damage caused by the Tenant. The Landlord also claims \$75.00 pursuant to a quote he got for the installation of that screen. The Landlord claims \$156.00 for four hours of cleaning of the stove top and inside of the

oven which the Tenant failed to do. The Landlord provided a hand written quote for a cleaning company that charges \$39.00 per hour.

The Landlord also referred me to the CIR to show that the stove was clean and the screen was undamaged at the start of the tenancy and that he had recorded the damage on the move-out portion of the CIR.

The Tenant did not dispute the unpaid rent payable on May 31, 2017 or the late fee. The Tenant stated that the damage to the screen was likely caused by his son but the screen could have easily been repaired as opposed to being replaced.

The Tenant testified that he cleaned the stove top and inside oven at the end of the tenancy and submitted that the Landlord's photographs of an unclean oven do not show it was the actual oven in the rental unit.

The Tenant testified that when the move-out condition inspection was undertaken, the Landlord pointed out no damages to the rental unit and detailed the damages in the move-out CIR later on in his absence. The Landlord denied this.

### Analysis

Firstly I accept the evidence that the tenancy ended pursuant to the 10 Day Notice on June 13, 2017 and this is when the Landlords were provided with a forwarding address. As the Landlords filed the Application on June 19, 2017, I find that the Landlords' request to keep the Tenant's security deposit was made within the 15 day time limit provided for by Section 38(1) of the Act.

Section 26(1) of the Act states that a tenant must pay rent when it is due under a tenancy agreement whether or not a landlord complies with the Act.

I accept the Landlord's undisputed written and oral evidence that the Tenant did not pay rent under the tenancy. Therefore, the Landlords are awarded **\$625.00** in unpaid rent.

Section 7(1) (d) of the *Residential Tenancy Regulation* allows a landlord to charge an administration fee up to **\$25.00** for late payment of rent if the tenancy agreement provides for this fee.

The Landlord provided a copy of the tenancy agreement which provides for this fee. As the Tenant failed to pay any rent on May 31, 2017, I find the Landlords are entitled to the **\$25.00** late rent fee claimed.

Section 37(2) (a) of the Act requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy. In addition, Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary.

With respect to the Landlords' claim for damages to the rental unit, the Tenant relied on his oral testimony alone to rebut the Landlords' claims. While the Tenant had indicated in the text message evidence that he had photographic evidence of the condition of the rental unit at the end of the tenancy, the Tenant did not furnish such evidence before me. Therefore, I am only able to conclude that the Tenant has failed to provide a preponderance of evidence to rebut the Landlords' claim. I prefer the Landlords' oral testimony, which is supported by photographic evidence and the CIR, to be more compelling than the Tenant's oral rebuttals.

The Tenant did not deny that he did not cause the damage to the front screen door and provided insufficient evidence to suggest that the screen door could have been easily repaired. If this was the case, then the Tenant should have repaired this during or prior to the tenancy ending. Therefore, I award this cost of the material and installation for a total amount of **\$92.91** as verified by the Landlords' estimate documents.

I apply the same findings to the Landlords' claim for the stove cleaning. The Tenant provided insufficient evidence such as photographs he claims to have taken at the end of the tenancy that he cleaned the stove and oven. I reject the Tenant's assertion that the Landlord provided photographic evidence of a stove from another rental unit as this allegation is unsupported. I accept, on the balance of probabilities, that the Tenant failed to clean the stove top at the end of the tenancy as required by the Act.

However, I find the Landlords' quote to remedy the cleaning of the oven and stove of \$39.00 per hour is excessive. In the alternative, I award the Landlords a nominal amount of \$25.00 per hour which I find is more reflective of an average cleaning cost in the area where the rental unit is located. Therefore, the amount awarded to the Landlords for this portion of the claim is **\$100.00** (four hours at \$25.00 per hour). As the Landlords have been successful in this matter, the Landlords are also entitled to recover from the Tenant the **\$100.00** filing fee. Therefore, the total amount awarded to the Landlords is **\$942.91**.

As the Landlords already hold \$312.50 in the Tenant's security deposit, I order the Landlords to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act.

As a result, the Landlords are issued with a Monetary Order for the remaining amount of **\$630.41 (\$942.91 - \$312.50)**. Copies of this order are attached to the Landlords' copy of this Decision. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. The Tenant may also be held liable for any enforcement costs incurred by the Landlords.

### Conclusion

The Landlords' request for an Order of Possession is dismissed as the Tenant has now moved out. The Tenant has breached the Act by not paying rent and causing damage to the rental unit. Therefore, the Landlords can keep the Tenant's security deposit and are issued with a Monetary Order for the remaining balance of \$630.41.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 31, 2017

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Residential Tenancy Branch