



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Ashurewin Holdings Ltd./RPM Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, 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 unpaid rent - 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 Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The following are undisputed facts: The tenancy started on January 15, 2014 and ended on March 31, 2017. Rent of \$1,100.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$550.00 as a security deposit. The Tenant paid no rent when it was due on March 1, 2017. The Landlord and Tenant BM mutually conducted both a move-in and move-out inspection with a completed condition report copied to the Tenants. The Landlord received the Tenant's forwarding address.

The Landlord claims unpaid rent of \$1,100.00

The Landlord states that the Tenants left the bathroom sink cracked. The Landlord states that the sink was new in 2012 and was part of a vanity. The Landlord states that the sink was not useable as it leaked from the crack and could not be removed separately from the vanity as told to the Landlord by their plumber. The Landlord claims the removal, replacement and installation cost of a new vanity that includes a sink in the amount of \$553.61. The Tenant states that despite the move-in report indicating that the sink was in good condition, the sink was cracked at the outset of the tenancy and was useable throughout the tenancy. The Tenant states that the sink was also a stand-alone sink and was not attached to a vanity. The Tenant states that the bathroom fixtures were from IKEA. The Landlord provides a photo and I note that the photo does not show any visual of the entire sink and no vanity is apparent in the photo.

The Landlord states that the Tenants left the stove and oven dirty. The Landlord claims a set amount of \$100.00. The Landlord states that this is the cost set out in a move-out sheet. The Landlord states that the \$100.00 was paid directly to a person who is employed and paid on a piece work basis. No invoice was provided by the Landlord. The Tenant agrees that the oven was left unclean and states that this was a miss on the part of the Tenant. The Tenant states that at move-out the Tenant's husband asked for an opportunity to clean the oven and the Landlord refused. The Landlord states that no offer to clean the oven was made by the Tenant's husband.

### Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the undisputed evidence of no rent paid for March 2017 I find that the Landlord has substantiated the claim for **\$1,100.00**.

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. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given the lack of supporting evidence that the Tenant BN offered to clean the stove at move-out and given the Landlord's persuasive evidence that no such offer was made, I accept that the stove was left dirty. Although the Landlord wishes to rely on the set amount indicated in a move-out charge list, I consider that this charge list cannot replace evidence of costs incurred and the use of a set cost does not meet the requirement to mitigate costs being claimed. I consider the amount claimed for cleaning the stove to be excessive. Considering that the Landlord provided no evidence of actual costs incurred such as an invoice and given that there is no evidence of any mitigation efforts in relation to the costs being claimed, I find that the Landlord has not substantiated the costs claimed. I therefore dismiss the amount claimed for cleaning the oven. In light however of the Tenant's failure to leave a clean stove I find that the Landlord is entitled to a nominal amount of **\$25.00**.

The Landlord provided no supporting evidence of the sink being permanently attached to a vanity or that the crack caused a leak. There is no evidence that the Landlord took any steps to mitigate the costs being claimed to replace the sink. Although I accept that the crack occurred during this tenancy as noted in the move-in condition report, considering the Tenant's plausible and persuasive evidence of a standalone sink, I find that the Landlord has not substantiated the entire costs claimed and I find that the Landlord is therefore only entitled to a nominal amount of **\$50.00**.

As the Landlord's claim had merit, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,275.00**. Deducting the security deposit of **\$550.00** plus zero interest from the entitlement leaves **\$725.00** owed by the Tenants.

Conclusion

I Order the Landlord to retain the security deposit plus interest in the amount of \$550.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$725.00**. 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: August 30, 2017

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Residential Tenancy Branch