



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Century 21 Performance Realty & Mgmt  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

The Landlord and Tenant were each given full opportunity under affirmation 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 Parties entered into a written tenancy agreement on October 20, 2016. The tenancy started on November 1, 2016 and ended on April 29, 2017. Rent of \$1,300.00 is payable on or before the first day of each month. No utilities are included in the rent. Section 47 of the tenancy agreement provides as follows: “The tenant is responsible for 1/3 of the hydro. The hydro is in the suite tenants name and they will provide the landlord with a copy of the bill for reimbursement.” There is no provision for the Tenant to pay the Landlord for any gas costs. At the outset of the tenancy the Landlord collected \$650.00 as security deposit and \$650.00 as a pet deposit. The Landlord returned the pet deposit in full to the Tenant. The Parties mutually conducted a move-in inspection with the condition report

completed and copied to the Tenant. The Parties mutually conducted a move-out inspection with a report completed. The Tenant does not recall being given a copy of that report and the Landlord does not recall providing the Tenant with a copy of the report prior to the copy sent to the Tenant by registered mail on May 14, 2017. The Tenant provided its forwarding address on the move-out report. The Tenant signs its agreement that the Landlord retain \$234.35 of the security deposit to pay for a previous hydro bill of that amount.

The Tenant does not dispute that no rent was paid for April 2017 and the Landlord claims \$1,300.00.

The Landlord states that Tenant was required to pay a 1/3 portion of the hydro and was required to have the utilities in its name. The Landlord states that prior to the end of the tenancy the Tenant allowed the gas to be disconnected and that it was reconnected in the other tenant's name. The Landlord states that the Tenant now owes the other tenant for 1/3 of the gas bill paid by the other tenant. The Landlord claims unpaid gas of \$25.31 and unpaid hydro of \$136.78. The Landlord states that as the Tenant agreed to a deduction of \$234.35 for the previous hydro and gas bill there is only \$415.65 left remaining in the security deposit.

The Tenant states that he agreed to the deduction on the move-out because he felt he had no choice and was being pressured. The Tenant states that the last bill paid for by the Tenant and in the Tenant's name was presented to the Landlord for reimbursement of the other tenant's usage but that the Tenant was not reimbursed. The Tenant states that there was a huge problem with the utility bills that were submitted to the Landlord and never paid. The Tenant states that he does not know how or why the gas was disconnected. It is noted that the amount agreed to be deducted on the move-out report indicates that the amount is in relation to all damage costs identified on the report, including the unpaid rent.

The Landlord withdraws its claim for the cost of replacing lightbulbs as the Landlord did nothing to mitigate the costs claimed for lightbulbs. The Landlord DD states that the Tenant failed to leave the unit clean and that it took the cleaners took 4.5 hours to clean the unit. The Landlord claims the cleaning costs and provides an invoice from a 3<sup>rd</sup> party indicating a charge of \$157.50 for the cleaning at \$35.00 per hour. The Tenant states that the only item left unclean was the stove and oven and that Landlord TS told the Tenant at the time that there would only

be a couple of hours for cleaning. The move-out report notes “minor housekeeping”. Landlord TS agrees that the Tenant was told that only a couple of hours would be required for cleaning.

### 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 that the Tenant did not pay rent for April 2017 I find that the Landlord has substantiated its claim for **\$1,300.00**. As the Landlord’s claim for unpaid rent has merit I find that the extinguishment provisions in relation to the failure of the Landlord to provide a copy of the move-out report to the Tenant to be irrelevant to this claim as the extinguishment provisions are only in relation to claims for damage to the unit.

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. Given the undisputed evidence of minor cleaning left at the end of the tenancy and the undisputed evidence of the Landlord that the cleaning left should only take a couple of hours, I find that the invoice for 4.5 hours of cleaning is an exaggerated claim. As a result I dismiss this claim.

Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. As nothing in the tenancy agreement provides for the Tenant to pay any amount of gas costs to the Landlord I dismiss the Landlord’s claim for gas costs. Given that there was no amendment to the tenancy agreement when the hydro was changed to a 3<sup>rd</sup> party’s name and as nothing in the tenancy agreement requires the Tenant to pay the Landlord for any hydro costs I find that the term in the tenancy agreement does not clearly express the rights and obligations around hydro and is therefore unenforceable. I dismiss the claim for unpaid hydro. I accept that at the end of the tenancy the Tenant agreed to a deduction of \$234.35. However since the tenancy agreement does not require the Tenant to pay the Landlord for any utility I find that this deduction was agreed to be placed against the overall claims of the Landlord, including the rent. I will therefore set off the full security deposit against the Landlord’s overall entitlement.

As the Landlord's application has met with some success I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,400.00**. Deducting the security deposit of **\$650.00** plus zero interest leaves **\$750.00** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$650.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$750.00**. 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: October 13, 2017

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Residential Tenancy Branch