



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, 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. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for compensation - 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 the Tenant’s Agent, (the “Tenant”) were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Landlord’s application indicates a total claimed amount of \$850.00. In its evidentiary materials the Landlord sets out individual claimed items for a total of \$1,135.00. The difference is \$285.00.

Rule 2.2 of the Residential Tenancy Branch rules of Procedure provides that a claim is limited to what is stated in the application. As the application sets the total monetary claim to \$850.00, the Landlord is limited to this amount in its claims. The Landlord was given opportunity to determine which claims totalling 285.00 were to be excluded from consideration. The Landlord withdrew its claim for cleaning in the amount of \$200.00

and the claim for the repair to the dresser in the amount of \$35.00 and reduced its claim for garbage disposal from \$150.00 to \$100.00.

Issue(s) to be Decided

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

Is the Landlord required to pay the Tenants double the security deposit?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy started on June 25, 2017 and ended by mutual agreement on July 21, 2017. The Tenants provided their forwarding address to the Landlord on July 21, 2017. During the tenancy rent of \$1,500.00 was payable on the 25<sup>th</sup> of each month. At the outset of the tenancy the Landlord collected \$750.00 as a security deposit. No move-in inspection was conducted or offered by the Landlord. The Landlord did not complete a move-out inspection report.

The Landlord states that costs were incurred for the postage required to serve the Tenant with the materials for these proceedings. The Landlord claims \$21.34.

The Landlord states that the Tenants left the stove filter unclean. The Landlord claims the costs of 2 filters plus tax in the amount of \$24.64. No photo of a dirty filter was provided by the Landlord. No receipt was provided for this cost. The Tenant states that they were only in the unit for a month and that the stove was not new.

The Landlord states that at the onset of the tenancy the Tenants did not have kitchen dishes, pots, utensils, etc. and that they agreed to buy items from the Landlord. The Landlord states that at first some items were given to the Tenants at no cost and that after the Tenants started to argue that the amounts being charged for other items were too high the Landlord changed her mind and is now seeking costs for all the items. The Landlord provides a list of these items. The Landlord claims \$444.05. The Tenant

states that initially the Parties agreed that the items would be borrowed by the Tenants and that it was not until later that the Landlord wanted to charge the Tenants for the items. The Tenant states that the amounts the Landlord was asking for the items were too high so the Tenants did not agree to purchase them. The Tenant states that the items were all left in the unit at the end of the tenancy. The Landlord agrees that the Tenants left some items in the unit and that these items are still included in the costs claimed.

The Parties agree that the Tenants left a bed frame and mattress at the unit. The Landlord claims \$100.00. The Landlord states that a person was paid for the removal in cash and no receipt was provided.

The Landlord states that the Tenants left a few scratches on the wall and doorway from moving in the bedframe and mattress. The Landlord states that is obtains paint at a reduced cost and paid about \$50.00 for the paint used to touch up the scratches. The Landlord states that the walls were last painted in 1999. The Tenant states that no marks were left on the walls.

The Landlord claims \$100.00 for the Landlord's costs to make photocopies of the evidence, for driving to make the application and for taking one of the Tenants on errands during the tenancy. The Landlord states that the Tenants were not told that there would be a charge for the Landlord's time in driving the Tenants to any place.

### Analysis

Section 23 of the Act provides that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day and the landlord must complete a condition inspection report and provide a copy to the tenant in accordance with the regulations. Section 24 of the Act provides that the right of a 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 make an offer for an inspection at move-in, does not complete a report and does not provide a copy of that report to the tenant. Based on the undisputed evidence that no move-in condition inspection was conducted I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished at move-in.

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 and as the Landlord did not return the security deposit to the Tenant's after the end of the tenancy I find that the Landlord must now pay the Tenants **\$1,500.00**.

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. 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 costs for the damage or loss have been incurred or established. Given the lack of any photo showing an unclean stove filter, given that there is no evidence that the stove was equipped with two filters, considering that the tenancy was only a month and given the lack of a receipt for the costs being claimed I find that the Landlord has not substantiated that the Tenants left two stove filters unclean or that the Landlord has substantiated the costs claimed. I dismiss the claim for stove filters.

Given the Tenants' evidence that there was no agreement to purchase any kitchen items from the Landlord, noting that even if there was an agreement the Landlord reversed that agreement in relation to previously agreed upon free items, accepting that the Tenants left all or some of the items at the unit and the Landlord is still claiming for these items I find on a balance of probabilities that the Landlord has failed to substantiate any agreement to pay for the kitchen items or that any of the costs claimed were incurred by the Landlord. I dismiss this claim.

Given the lack of receipt for removing garbage I find that the Landlord has not substantiated the cost claimed. However, as it is undisputed that the Tenants left items that were the Tenants' responsibility to remove I find that the Landlord has substantiated a nominal amount of **\$50.00** for this breach by the Tenants.

Policy Guideline #40 provides that the useful life of interior paint is four years. Given the lack of a move-in and move-out report as evidence of the state of the unit at move-in and move-out, considering the Tenants' evidence that no scratches were left by them, considering the Landlord provided no receipt for the costs of paint, and given that the paint was aged with no useful life or value remaining to be lost, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused the loss claimed and has not substantiated that the costs claimed were incurred. I dismiss the cost for the touch up painting.

As nothing in the Act provides for a party to claim costs to participate in the dispute resolution proceedings, including the costs to provide evidence and to send mail, other than the filing fee I dismiss the Landlord's claim for postage and driving around to make photocopies and the Landlord's application. As running the Tenants on errands is not a matter related to the tenancy agreement or the Act, I dismiss this claim.

As the Landlord's application has met with very minor success I decline to award recovery of the filing fee. Deducting the Landlord's **\$50.00** entitlement from the Tenants' **\$1,500.00** entitlement leaves **\$1,450.00** to be returned to the Tenants forthwith.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$1,450.00**. 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: January 29, 2018

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Residential Tenancy Branch