



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNSD MNDC FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act"):

- a Monetary Order for unpaid rent and damages pursuant to section 67;
- authorization to retain the security deposit in partial satisfaction of their monetary award pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present service of documents was confirmed. Based on the undisputed evidence of the parties I find that the tenant was served with the landlord's application and evidence in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy began in October, 1993 and ended in April, 2017. A security deposit of \$400.00 was paid at the start of the tenancy and is still held by the landlord. The parties participated in a condition inspection report at the start and end of the tenancy. The

tenant disagrees with the landlord's assessment of the rental unit condition and did not provide written authorization that the landlord may deduct any amount from the security deposit.

The tenant provided the landlord with a forwarding address by email dated August 15, 2017. The landlord filed his application for dispute resolution on August 28, 2017.

The landlord seeks to deduct \$271.17 from the security deposit for the following items.

Item	Amount
Carpet Cleaning	\$208.95
Carpet Stain Cleaners	\$17.33
Carpet Stain Cleaner	\$11.19
Degreaser Spray	\$7.38
Door Handle	\$26.30
<b>Total Monetary Order</b>	<b>\$271.15</b>

The landlord submitted receipts in support of the amount sought.

During the hearing the tenant said that she agrees to the deduction of \$26.30 for the door handle repairs.

The parties gave evidence that the carpets were new at the start of the tenancy and not replaced throughout the tenancy.

The landlord testified that the degreaser spray was necessary as the sides of the oven required special cleaning products. The tenant said that the sides of the oven were not inspected as she was unable to move the oven to clean the sides.

### Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. In the present matter the parties gave undisputed evidence that the tenant first provided their forwarding address in writing on August 15, 2017. The landlord filed his

application for dispute resolution on August 28, 2017. Accordingly, I find that the landlord was within the timeframe set by the Act of 15 days from August 15, 2017 to file for dispute resolution.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

Policy Guideline 40 provides a general guide for determining the useful life of building elements. The Guideline states that an arbitrator “may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant’s responsibility for the cost or replacement”. In the present case, when considering the length of this tenancy I find that some of the building elements have exceeded the expected useful life. There was no evidence that the building elements were replaced throughout the tenancy. Because of this, I find that the tenant is only responsible for the damage or loss to the rental unit in excess of the expected wear and tear.

Policy Guideline 40 provides that the useful life of carpeting to be 10 years. I find that there is insufficient evidence to show that the carpet cleaning was necessitated by the tenant’s actions that went beyond the expected wear and tear. I find that the landlord has not shown that they have suffered a loss due to the tenant’s actions. It is reasonable to expect that after two decades carpets will require cleaning. I find that this is a cost of operating a business as a landlord and not a loss that arises due to the tenant’s actions. Furthermore, I find that a tenancy agreement clause requiring a tenant to pay for professional cleaning at the end of a tenancy to be unenforceable pursuant to section 20(e) of the *Act*. I dismiss this portion of the landlord’s claim.

I find that there is insufficient evidence that the oven cleaning was required due to the tenant’s violation of the Act, regulations or tenancy agreement. While I accept the landlord’s submission that special cleaning products were required I find that there is insufficient evidence to show that this was a result of the tenant’s actions and not simply the product of the age of the appliances in the rental unit. Consequently, I dismiss this portion of the landlord’s application.

The tenant testified that she agrees with the landlord's claim for \$26.30 to be deducted from the security deposit.

As the landlord's application was not wholly successful I decline to issue an order that the landlord may recover the filing fee for this application.

### Conclusion

I issue a monetary Order in the tenant's favour in the following terms which allows the landlord's monetary award and requires the landlord to return the remainder of the tenant's security deposit plus interest to the tenant:

Item	Amount
Security Deposit	\$400.00
Interest on Deposit of \$405.00 calculated to March 15, 2018, date of decision	\$90.92
Less Landlord's Monetary Award	-\$26.30
<b>Total Monetary Order to Tenant</b>	<b>\$464.62</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 15, 2018

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Residential Tenancy Branch