



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

Tenant: MNSD, FF  
Landlord: MNSD, MNDC, MND, FF

### Introduction

This hearing was convened in response to cross-applications by the parties. The landlord filed their application March 13, 2018 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A monetary Order for damage / loss – Section 67
2. An Order to retain the security deposit – Section 38
3. An Order to recover the filing fee for this application - Section 72

The tenant filed their application September 26, 2017 for Orders as follows;

4. An Order for return of security deposit - Section 38
5. An Order to recover the filing fee for this application - Section 72.

The applicant **tenant** was provided with a copy of the Notice of a Dispute Resolution Hearing dated September 29, 2017 after filing their application to dispute the landlord's Notice to End. The tenant, however, did not attend the hearing set for today at 1:30 p.m. The phone line remained open during the hearing of 35 minutes and the conference call bridge was monitored throughout this time. The only party to call into the hearing was the landlord.

I accept the landlord's evidence that the tenant was served with the **landlord's** application for dispute resolution and notice of hearing as well as their evidence by registered mail, sent to each of the tenants at the address provided the landlord on the tenant's application for dispute resolution. The landlord testified that all of their registered mail went unclaimed.

The landlord was given opportunity 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 undisputed evidence in this matter is as follows. The tenancy started August 25, 2016 as a written tenancy agreement. The hearing had benefit of the written Tenancy Agreement. The tenancy ended August 31, 2017.

The payable monthly rent was in the amount of \$2200.00 due in advance on the first day of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$1100.00 which the landlord retains in trust. The landlord provided there was a *move in* condition inspection conducted at the outset of the tenancy performed in accordance with the Act. The house was new at the time of occupancy as supported by a copy of the Certificate of Occupancy dated August 19, 2016. The landlord provided evidence that they conducted a mutual condition inspection at the end of the tenancy at which time the tenant and landlord agreed the landlord could retain \$400.00 of the security deposit in satisfaction of cleaning, wall repairs, bulbs and a missing sink strainer for which the landlord has made claim for compensation

**Landlord's application**

The landlord's monetary claim on application is in the sum of \$4907.40.

The landlord seeks costs for general cleaning, wall repair and painting, replacement of bulbs and a strainer, ongoing cleaning of the refrigerator and landlord's time and mileage to attend to all aspects of their claim. The landlord also seeks to recover legal services to advance this claim (\$56.00), translation services to advance this claim (\$349.38), office supplies and printer ink to address this claim (\$396.53), and their time and mileage to prepare and advance this claim (\$96.85), for a total of \$898.76 as their litigation costs in this matter exclusive of their filing fee.

The landlord provided testimony the tenant told them that the kitchen refrigerator was left for several months unattended during the summer with a quantum of raw meat inside it which, through spoilage and filtration, left a persistent, and now determined to be a permanent foul odour throughout refrigerator rendering it unusable. The landlord provided evidence the refrigerator was one year old. The landlord provided evidence they expended time and mileage to continually clean the refrigerator for new tenants on a weekly basis until they determined it was no longer worthwhile to keep trying to

eradicate the odour. The landlord claims they were also told by an appliance retailer it was not worthwhile to pursue this course. As a result, the landlord is now claiming for the cost of a new refrigerator for which they have provided a quote, for a similar available model in the amount of \$1760.91. Additionally, the landlord is claiming their cost for time and mileage associated with weekly cleaning of the refrigerator in the amount of \$402.30, which claim is accompanied by a ledger in the claim sum.

The landlord claims that the stove oven is not usable because it contains a residue within it left by the tenant that repeatedly smokes when the oven is turned on. The remainder of the stove, such as the cooking top operates as intended. The landlord is claiming for the cost of a new stove range for which they have provided a quote, for a similar available model in the amount of \$935.31.

The landlord further seeks time and mileage costs in the amount of \$468.35 which is accompanied by a ledger itemizing their claim for miscellaneous tasks to: place an online advertisement for a painter and a cleaning lady, their telephone interviews with painters and cleaning lady, their estimate time with painter and cleaning lady, their estimates with painter 1 and painter 2 and estimates with cleaning lady 1 and 2, their time and mileage to accommodating the final painter and cleaning lady in the rental unit, their time and mileage to secure an opinion of appliance dealer and obtain a quote from a different retailer. In part, the landlord provided their claim of \$41.52 for solely their time and mileages to purchase a strainer valued at \$12.17; and, again return to the retailer to exchange the strainer for a time and mileage claim of \$31.52, for a total claim of \$73.04 to replace a strainer valued at \$12.17.

#### Tenant's application

The tenant had sought the return of \$700.00 of their security deposit and their filing fee.

#### Analysis

*A copy of the Residential Tenancy Act, Regulations and other publications are available at [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

As the tenant did not attend the hearing in defense of their claim and the landlord's, their application is preliminarily **dismissed**, without leave to reapply.

The onus is on the landlord to prove their claim on balance of probabilities.

It must be known that parties' costs to advance their claim within this Arbitration process, such as the landlord's claim to recover a variety of arbitrary and discretionary costs associated to prepare and advance their claim, are the responsibility of each party. These costs are typically also and sometimes referenced as litigation or court costs. As such, these costs are not compensable within the scope of this dispute resolution process and therefore the landlord's claims related to preparing for the hearing in the sum of \$898.76 are **dismissed**, without leave to reapply.

While I accept the landlord's efforts to return their rental unit to a reasonable state I find their claim for solely *time and mileage* in this matter totalling \$468.35 are extravagant in contrast to their repair and replacement costs and general cleaning (\$35.60 +12.17+ 210.00+ 84.00 = \$341.77). I find it particularly unreasonable for the landlord to separately claim \$73.04 to deal with an item costing them \$12.17. I find that a set amount of **\$150.00** more reasonably and aptly represents the landlord's cost of doing business as a landlord in this matter and I grant the landlord this amount for their time and mileage claim.

I find that the tenant's agreement to surrender **\$400.00** of the security deposit aptly compensates the landlord's claim for repair and replacement costs and general cleaning in the sum of \$341.77

I accept the landlord's undisputed evidence in respect to the fatal condition of the refrigerator. Considering all of the circumstances surrounding the landlord's claims related to the refrigerator I find it would be unreasonable to award the landlord in excess of the value of the replacement cost of the refrigerator. Considering the refrigerator was 1 year old, I grant the landlord the cost to replace the refrigerator in their claim amount of **\$1760.91**, without leave to reapply.

I accept the landlord's undisputed evidence in respect to the fatal condition of the stove oven. Considering all of the circumstances surrounding the landlord's claims related to the oven and given that the rest of the stove remains operable I find it would be more appropriate to grant the landlord an amount for loss of the oven. Considering the stove range was 1 year old, I grant the landlord **\$450.00** for their loss of the oven function of the stove range, without leave to reapply.

Effectively, the balance of the landlord's claim is dismissed, without leave to reapply. As the landlord was successful in their application they are entitled to recover their filing fee.

Calculation for Monetary Order is as follows. The tenant's security deposit in trust will be offset from the award herein.

landlord's award – <i>time and mileage</i>	\$150.00
Tenant agreement landlord retain security deposit for repair, replacement and general cleaning costs	\$400.00
Damage to refrigerator	\$1760.91
Damage to stove range - oven	\$450.00
Filing fee	\$100.00
<i>Minus tenant's security deposit in trust</i>	- \$1100.00
to landlord	<b>\$1760.91</b>

### **Conclusion**

The tenant's application has been **dismissed**, without leave to reapply.

The landlord's application in those parts applicable has been granted.

**I Order** the landlord may retain the tenant's security deposit of \$1100.00 in its entirety as in partial satisfaction of their award and **I grant** the landlord an Order under Section 67 of the Act for the balance due of **\$1760.91**. If necessary, this **Order** may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding.**

*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: May 01, 2018

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Residential Tenancy Branch