



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            MNDL-S, FFL

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for a monetary order for damages to the unit, site or property, to retain the tenant's security deposit, and to recover the cost of the filing fee.

Two agents for the landlord JF and JC ("agents") attended the teleconference hearing and gave affirmed testimony. During the hearing the agents were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The agents testified that the Notice of Hearing and application were served on the tenant by registered mail on November 15, 2018 and that the mail was addressed to the tenant at the tenant's written forwarding address provided in evidence on the outgoing Condition Inspection Report. The registered mail tracking number has been included on the cover page of this decision for ease of reference.

According to the online registered mail tracking website the registered mail package was signed for and accepted on November 16, 2018. Based on the undisputed testimony before me and the registered mail tracking number provided which was confirmed by way of the online registered mail website information, I find the tenant was served with the Notice of Hearing, application and documentary evidence on November 16, 2018, which is the date the registered mail package was signed for and accepted. Therefore, the hearing continued without the tenant present and as such, I consider this application to be unopposed by the tenant.

### Preliminary and Procedural Matters

At the outset of the hearing, the agents were advised that the landlord's application was in the amount of \$440.00 before the filing fee, yet the evidence submitted indicated a higher amount of

\$488.84 before the filing fee. As the landlord failed to amend their application and serve the tenant with the amendment, I find that it would be prejudicial to the tenant to consider an amount higher than what was served on the tenant. Therefore, the agents were advised that I would only be considering a claim up to \$440.00 before the filing fee as served on the tenant.

In addition, the agents confirmed their email address at the outset of the hearing. Accordingly, the decision will be emailed to the landlord and sent by regular mail to the tenant who did not attend the hearing to provide their email address.

#### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

#### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on June 15, 2017 and reverted to a month to month tenancy after six months. The agents stated that the tenant vacated the rental unit on October 31, 2018. During the tenancy monthly rent was \$890.00 per month which includes \$15.00 for "insurance" and was due on the first day of each month. The tenant paid a security deposit of \$437.50 which the landlord continues to hold and has accrued no interest to date.

The landlord's monetary claim, which I note above is limited to \$440.00 as claimed, is described as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning	\$60.00
2. Shower head repair	\$50.00
3. Labour to replace kitchen countertop	\$236.25
4. Material cost of kitchen countertop	\$142.59
<b>TOTAL</b>	<b>\$488.84</b>

Regarding item 1, the landlord has claimed \$60.00 for cleaning costs and submitted many colour photos, a Condition Inspection Report and work order in evidence in support of the amount claimed. The amount listed matches the claim. The agents stated that cleaning was required as the tenant failed to clean the rental unit to a reasonably clean condition.

Regarding item 2, the landlord has claimed \$50.00 to repair a missing shower head that was not missing at the start of the tenancy. The landlord submitted a colour photo of the missing shower head, a Condition Inspection Report and work order in evidence in support of the amount claimed. The amount listed matches the claim. The agents referred to the Condition Inspection Report which indicates that at the end of the tenancy the shower head was missing which matches the photo evidence.

Regarding items 3 and 4 – the landlord has claimed \$236.25 for the labour to repair the damaged kitchen countertop, and \$142.59 for the cost of the laminate kitchen countertop replacement. The landlord submitted several colour photos that support a damaged kitchen countertop. The Condition Inspection Report indicates that the kitchen countertops were in good condition at the start of the tenancy and was chipped at the end of the tenancy. The agents also referred to the invoices submitted in support of both amounts claimed for these items. The agents were unsure of the age of the countertops; however, indicated they were not damaged at the start of the tenancy.

The landlord is also seeking the recovery of the \$100.00 filing fee.

### Analysis

Based on the undisputed documentary evidence and undisputed testimony of the agents provided during the hearing, and on the balance of probabilities, I find the following.

As I have accepted that the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, and as noted above, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful in the maximum amount as indicated above of \$440.00 as I find the evidence supports the landlord's claim and that the claim for the countertop is reasonable. I am not applying Policy Guideline 40 for the useful lifespan of countertops as I find the tenant damaged the countertops beyond reasonable wear and tear and that the claim is reasonable. I also find that the tenant breached section 37 of the *Act* which requires the tenant to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. I find the tenant failed to leave the rental unit reasonably clean and damaged the areas claimed by the landlord beyond reasonable wear and tear.

Therefore, I find the landlord has met the burden of proof in proving their entire claim of **\$440.00** as claimed.

I dismiss any amount over \$440.00 before the filing fee is applied, without leave to reapply as the landlord did not serve the tenant with an amended application.

As the landlord's claim was successful, I find the landlord is entitled to the recovery of the cost of the filing fee of **\$100.00** pursuant to section 72 of the *Act*, as their application was successful. Based on the above, I find the landlord has established a total monetary claim of **\$540.00** comprised of \$440.00 as claimed plus the \$100.00 recovery of the cost of the filing fee.

As the landlord continues to hold the tenant's \$437.50 security deposit and pursuant to sections 38 and 72 of the *Act*, I authorize the landlord to retain the tenant's full security deposit of \$437.50 which has accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$102.50**.

I caution the tenant to comply with section 37 of the *Act* in the future.

### Conclusion

The landlord's application is successful.

The landlord has established a monetary claim of \$540.00 and has been authorized to retain the tenant's full security deposit of \$437.50 including \$0.00 in interest, in partial satisfaction of the landlord's monetary claim.

The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$102.50. The landlord may enforce the monetary order in the Provincial Court (Small Claims Division).

The decision will be emailed to the landlord and sent by regular mail to the tenant.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 14, 2019

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Residential Tenancy Branch