



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNDC, MNSD, MND, FF.*

### **Introduction.**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for unpaid rent, for costs to replace a refrigerator door and a counter top and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of the claim. The tenant applied for the return of the security deposit and the filing fee.

The landlord stated that she served the tenant with the notice of hearing and evidence package on June 28, 2019 by registered mail. The landlord filed a copy of the tracking slip. Despite having made application and having been served a notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions. Since the tenant did not attend the hearing, her application is dismissed. Accordingly, this hearing only dealt with the landlord's application.

### **Issues to be decided**

Is the landlord entitled to a monetary order for unpaid rent, for costs to replace a refrigerator door and a counter top and for the recovery of the filing fee? Is the landlord entitled to retain the security deposit?

### **Background and Evidence**

The tenancy started in 2015 and ended on April 15, 2019. The monthly rent at the end of tenancy was \$1,549.70, payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$687.50. The landlord testified that on March 11, 2019 the tenant provided written notice to end the tenancy effective April 15, 2019. The tenant paid rent up to this date. The landlord stated that rent is due on the first of each month and therefore since the tenant did not provide adequate notice, the landlord is claiming rent for the latter half of April 2019 in the amount of \$774.85.

The landlord filed photographs that show a big dent in the door of the refrigerator and a bleached-out spot on the kitchen countertop. The landlord agreed that both items are functional and that she has not replaced either. The landlord is claiming an estimated amount of \$1,401.85 to replace both items plus the recovery of the filing fee of \$100.00.

### **Analysis**

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of the landlord and the documents filed into evidence, I accept the landlord's evidence in respect of the claim. In this case rent is payable on the first of each month and by giving notice on March 11, 2019, the earliest the tenant could have ended the tenancy was April 30, 2019. The tenant paid rent up to April 15, 2019 thereby causing the landlord to suffer a loss of income for the latter part of April. Accordingly, I find that the landlord is entitled to **\$774.85**, which is the loss that she suffered.

The tenant provided the landlord with a forwarding address on May 17, 2019 and proceeded to make an application for the return of the deposit on May 22, 2017. Since the tenant did not give the landlord the legislated time frame of 15 days after receipt of the forwarding address, to return the deposit or make an application for dispute resolution, prior to making her application on May 22, 2019, the landlord is not obligated to return double the security deposit as the time frame of 15 days does not apply once the tenant has made application for the return of the deposit and is awaiting a hearing.

The landlord provided photographs of the damage to the refrigerator door and the counter top. The landlord agreed that the refrigerator door has not been replaced or repaired and is currently in use. Therefore I find that the refrigerator is functional, and the damage is cosmetic. I further find that while the door has a dent, this damage does not affect its functionality.

Therefore I find that the landlord is not entitled to her claim to replace the door. However, the dent has reduced the value of the refrigerator and I will award the landlord an arbitrary amount towards this loss of value.

I also find that the damage to the countertop is cosmetic and does not affect the functionality of the counter top. Therefore I will also award the landlord an arbitrary amount towards the loss of value of the countertop due to an area that is bleached out.

*Residential Tenancy Policy Guideline #16* states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Based on the estimate filed by the landlord (\$1,401.85), the age of the refrigerator and countertop (5 years) and the useful life as per *Residential Tenancy Policy Guideline #40* of a refrigerator (15 years) and the countertop (25 years), I award the landlord a minimal award of \$300.00.

The landlord has established a claim of \$774.85 for loss of income and \$300.00 for damages. Since the landlord has proven her claim I award her the recovery of the filing fee of \$100.00 for a total established claim of \$1,174.85.

I order that the landlord retain the deposit of \$687.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$487.35. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

The landlord may retain the security deposit. In addition, I grant the landlord a monetary order in the amount of **\$487.35**.

The tenant’s application is dismissed in its entirety.

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: August 09, 2019

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Residential Tenancy Branch