



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *OPC, MNSD, MNR, MND, FF*

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession and monetary order for cost of repairs, cleaning, late fees and for the recovery of the filing fee. The landlord also applied to retain the security deposit.

The landlord testified that on August 11, 2019, he served the tenant with the notice of hearing by registered mail to the rental unit, at which time the tenant resided in the rental unit. The tenant moved out on August 26, 2019. The landlord amended his application and served the tenant with the amendment on September 11, 2019 to the forwarding address provided by the tenant. The landlord filed copies of tracking slips for both packages. Despite having been served the 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 has moved out and the landlord has possession of the rental unit, the landlord's application for an order of possession is moot and accordingly dismissed. Therefore, this hearing only dealt with the landlord's application for a monetary order.

### **Issues to be decided**

Is the landlord entitled to a monetary order for the cost of repairs, late fees, and for the recovery of the filing fee?

### **Background and Evidence**

The landlord testified that the tenancy started on June 01, 2019. The monthly rent was \$1,100.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$1,100.00. The rental unit consists of a suite located in a four-plex owned by the landlord. The other three suites are rented out separately.

The landlord stated that he purchased the close to 40 years old 4-plex approximately 7 years ago. Copies of the tenancy agreement and addendum were filed into evidence. A term in the addendum requires the tenant to pay a late fee of \$50.00 for rent received after the first of the month. On July 24, 2019, the landlord served the tenant with a notice to end tenancy for cause. The tenant did not dispute the notice and moved out on August 26, 2019. The landlord found a tenant for September 01, 2019.

The landlord stated that the tenant was smoking inside the rental unit and has left several burn marks on the carpet and linoleum. The tenant also left behind some of his unwanted possessions and a fresh fish in a plastic bag in one of the kitchen cabinets, which caused the cabinet to have a foul odour. The landlord stated that he made several attempts to clean the cabinet but despite his best efforts he was unsuccessful, and the cabinet continued to have the foul odour. The landlord stated that the only way to completely rid the cabinet of the odour is to replace it. The landlord filed a copy of an estimate to replace the cabinet and stated that he has not replaced the cabinet due to time constraints. The new renter took possession of the rental unit shortly after this tenant moved out.

The landlord stated that due to the tenant smoking inside the rental unit, the walls had smoke damage and had to be painted. The landlord added that tenant put a chip in the kitchen cooking range and agreed that the stove was operational despite the damage.

The landlord also stated that the toilet roll holder was missing and the toilet tank was cracked. The landlord replaced both with used items but did not file proof of what it cost him to replace. The landlord is claiming the following:

1.	Late fee	\$50.00
2.	Registered mail x 2	\$23.05
3.	Cleaning	\$189.00
4.	Junk removal	\$133.00
5.	Carpet cleaning	\$105.00
6.	Kitchen Range	\$600.00
7.	Toilet and Toilet Roll Holder	\$450.00
8.	Kitchen Cabinet	\$500.00
9.	Flooring	\$5,777.52
10.	Painting	\$5,000.00
11.	Filing fee	\$100.00
	<b>Total</b>	<b>\$12,927.57</b>

The landlord has filed photographs and copies of invoices/estimates to support portions of his monetary claim.

### **Analysis**

1. Late fee - \$50.00

Section 7(1)(d) of the Residential Tenancy Regulations states that the landlord may charge an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 7(2) states that a landlord must not charge the fee unless the tenancy agreement provides for that fee.

The landlord filed a copy of the tenancy agreement and addendum into evidence which contains a clause requiring the tenant to pay \$50.00 for rent paid after the due date of the first of each month. Since section 7(1)(d) as stated above allows for a fee of not more than \$25.00 for late fee, I award the landlord a late fee of \$25.00 for rent that was not received by August 01, 2019.

2. Registered Mail x 2 - \$23.05

The legislation does not permit me to award any litigation related costs other than the filing fee.

3. Cleaning - \$189.00

4. Junk Removal - \$133.00

5. Carpet Cleaning - \$105.00

The landlord has filed photographs and invoices to support his claim for items #3, #4 and #5. I find that the landlord has filed sufficient evidence to support his monetary claim and therefore I grant the landlord his claim for items #3, #4 and #5.

6. Kitchen Range \$600.00

The landlord stated that the kitchen range has not been repaired, He stated that he replaced the range with a used range for use by the new tenant. The landlord agreed that the kitchen range is functional, and the damage is cosmetic. The landlord has filed a quotation for the replacement of the range in the amount of \$793.51 and a photograph of the chip on the range. I find that while the range has one small chip, this damage does not affect its functionality.

Based on the photograph, I find on a balance of probabilities that it is more likely than not that the chip is small enough to be a result of wear and tear. Accordingly I dismiss the landlord's claim for \$600.00.

7. Toilet and Toilet Roll Holder - \$450.00

The landlord stated that the toilet tank was cracked, and that the toilet roll holder was missing and is claiming the cost of replacement. The landlord filed photographs to support his testimony. The landlord added that he replaced these items with used items and did not provide any proof of the cost incurred.

Based on the photographs filed into evidence and the landlord's testimony I find that the damage did occur during the tenancy and therefore the landlord is entitled to be compensated. Since the landlord did not file any proof of the cost incurred, I must decide on the quantum of the award.

*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 testimony of the landlord and the photographs filed into evidence, I award the landlord \$100.00 towards the cost of replacing the toilet tank and roll holder.

8. Kitchen Cabinet - \$500.00

Based on the photographs filed into evidence, I accept the landlord's testimony that the tenant left a fresh fish to rot in a plastic bag in one of the kitchen cabinets. I accept that the odour was offensive and difficult to remove. However the landlord has not yet replaced the cabinet and it is in use by the new tenant.

Based on my findings and *Residential Tenancy Policy Guideline #16*, I award the landlord a nominal award of \$50.00.

9. Flooring - \$5,772.52

10. Painting - \$5,000.00

Section 40 of the *Residential Tenancy Policy Guideline* addresses the useful life of an item. I will use this guideline to assess the remainder of the useful life of the flooring and painting. As per this policy, the useful life of flooring is ten years and the useful life of interior paint is 4 years.

The landlord stated that he has not changed the flooring since he purchased the rental unit approximately seven years ago. The landlord was not sure of the age of the flooring of this 40-year-old rental unit.

Therefore I am unable to determine the remainder of the useful life of the flooring. Accordingly, the landlord's claim for the cost of replacing the flooring is dismissed.

The landlord also stated that he has not painted the rental unit since he purchased it approximately 7 years ago. The useful life of interior paint is 4 years and therefore before the start of tenancy the paint had already outlived its useful life and would have to be painted at the landlord's cost. Accordingly, the landlord's claim for the cost of painting the rental unit is dismissed.

11. Filing fee \$100.00

Since the landlord has proven a portion of his claim, I award him the recovery of the filing fee.

Overall the landlord has established a claim as follows:

1.	Late fee	\$25.00
2.	Registered Mail x 2	\$0.00
3.	Cleaning	\$189.00
4.	Junk Removal	\$133.00
5.	Carpet Cleaning	\$105.00
6.	Kitchen Range	\$0.00
7.	Toilet and Toilet Roll Holder	\$100.00
8.	Kitchen Cabinet	\$50.00
9.	Flooring	\$0.00
10.	Painting	\$0.00
11.	Filing fee	\$100.00
	<b>Total</b>	<b>\$702.00</b>

The landlord has established a claim in the amount of \$702.00. The landlord is holding a security deposit in the amount of \$1,100.00. I order that the landlord retain \$702.00 from the security deposit of \$1,100.00 in full satisfaction of the claim

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

## **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of the monetary claim. Because the landlord has established a claim in the amount of less than the security deposit it is appropriate that I order the return of the balance of the security deposit to the tenant.

Accordingly, I so order. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for \$398.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord a monetary order of **\$398.00**.

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: October 10, 2019

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Residential Tenancy Branch