



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MND, MNDC, MNSD, 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 utilities, cleaning, painting, and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her monetary claim. The tenant applied for the return of double the security deposit and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issues to be decided**

Is the landlord entitled to a monetary order for unpaid utilities, cleaning, painting, and for the filing fee? Did the landlord make application to retain all or part of the deposit in a timely manner? Is the tenant entitled to the return of double his security deposit and to the recovery of the filing fee?

### **Background and Evidence**

The parties agreed that the tenancy started on July 25, 2018 and ended on August 02, 2019. The monthly rent was \$3,400.00 and prior to moving in the tenant paid a security deposit of \$875.00. The landlord made this application on August 13, 2019.

The landlord stated that a move out inspection was carried out on August 02, 2019 but a report was not created.

The landlord testified that during the inspection, she pointed out the microwave oven to the tenant as it was not clean and was not working. The tenant denied having been informed during the inspection, that the oven was not working. The landlord stated that the microwave oven was an over the range oven and to repair it cost more than to replace it. The landlord testified that the oven was 1.5 years old and is claiming \$614.97 to replace it. The landlord filed a copy of the invoice to support her testimony.

The tenant stated during the hearing, that he had cleaned the microwave oven but changed his testimony when I directed him to the photograph of the microwave oven as filed by the landlord. The photograph indicates that the oven was left in a dirty condition.

The landlord also filed photographs that show that the rental unit was not clean at the end of tenancy and is claiming \$300.00 for the cost of cleaning. The tenant agreed that he had not cleaned the rental unit prior to moving out.

The landlord stated that the tenant had painted the child's bedroom in a different colour and therefore she had the whole unit repainted. The tenant stated that he had installed a speaker on the bedroom wall and when he took it down, he repaired the wall and painted over. The tenant denied having used a different colour and stated that the walls in the rental unit were white and that he used white paint to touch up the affected areas. The landlord stated that he used a different shade of white paint and is claiming the cost of painting the entire unit in the amount of \$2,100.00. The landlord amended her claim to \$800.00 which she stated was for the cost of painting the two bedrooms.

The landlord stated that the tenant owed \$21.65 for the cost of a water bill for the period of July 01-31, 2019. The tenant stated that he had paid the bill but did not file evidence to support his testimony. The landlord filed a copy of the bill.

The landlord also stated that the tenant removed a curtain and disposed of it. The tenant stated that he had informed the landlord that he had no use for the curtain. The landlord stated that she had directed the tenant to remove the curtain and store in the storage unit. The tenant agreed that he threw it away. The landlord stated that the curtain was new and was installed just prior to the start of the tenancy. The landlord is claiming \$100.00 to replace the curtain.

The landlord is claiming the following:

1.	Utility bill – Water	\$21.65
2.	Replace microwave oven	\$614.97
3.	Painting	\$800.00
4.	Cleaning	\$300.00
5.	Replace curtain	\$100.00
6.	Filing fee	\$100.00
	Total	<b>\$1,936.62</b>

The tenant has made a claim for the return of double the security deposit in the amount of \$3,400.00.

### **Analysis**

#### **Landlord's application:**

##### 1. Utility bill - \$21.65

The landlord has filed evidence to support her claim. The bill is dated August 12, 2019 for usage during the period of July 01-31, 2019, which is the last month of tenancy. I find that the landlord is entitled to her claim.

##### 2. Replace microwave oven - \$614.97

The photographs filed into evidence indicate that the microwave oven was not clean at the end of tenancy. I find on a balance of probabilities that it is more likely than not that the oven broke down from careless use.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the microwave oven.

As per this policy, the useful life of a microwave oven is 10 years. The landlord stated that the oven was 1.5 years old and therefore by the end of the tenancy, the oven had 8.5 years of useful life left. I will prorate the cost of the balance of the useful life of the oven. The landlord provided proof of the cost she incurred at \$614.97. Therefore I find that the landlord is entitled to \$522.72.

### 3. Painting - \$800.00

The tenant agreed that he touched up the paint in one bedroom. The landlord filed photographs that support her testimony that the touched-up paint did not match the original paint. Based on the testimony of both parties I find that the tenant is responsible for the cost of painting one bedroom.

Using the section 40 of the *Residential Tenancy Policy Guideline*, the useful life of interior paint is 4 years. The landlord painted the unit in March 2018 and therefore by the end of tenancy in August 2019 the paint had already used up 17 months of useful life leaving a balance of 31 months.

The landlord is claiming \$800.00 of the total bill of \$2,100.00, for the cost of painting two bedrooms. Since I find that the tenant touched up paint in only one bedroom, I will limit the landlord's claim to \$400.00.

Pursuant to section 40 the prorated amount of the cost of painting that the landlord is entitled to is \$258.33.

### 4. Cleaning - \$300.00

The tenant agreed that he had not fully cleaned the rental unit and therefore I award the landlord \$300.00 towards cleaning.

### 5. Replace Curtain - \$100.00

The tenant agreed that he had disposed of the landlord's curtain and therefore I award the landlord the cost of replacement.

### 6. Filing fee – \$100.00

The landlord has proven most of her claim and therefore I award the landlord the recovery of the filing fee.

Overall the landlord has established the following claim:

1.	Utility bill – Water	\$21.65
2.	Replace microwave oven	\$522.72
3.	Painting	\$258.33
4.	Cleaning	\$300.00
5.	Replace curtain	\$100.00
6.	Filing fee	\$100.00
	<b>Total</b>	<b>\$1,302.70</b>

**Tenant's application:**

Section 35 of the *Act* addresses the condition inspection and states as follows:

**Condition inspection: end of tenancy**

- 35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
  - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
  - (b) the tenant has abandoned the rental unit.

Based on the testimony of both parties I find that the landlord was not compliant with section 35(3) of the *Act*. The landlord failed to generate a move out condition inspection report during the move out inspection that was conducted in the presence of the tenant.

Section 36 of the *Residential Tenancy Act* address the consequences if inspection report requirements are not met and states the following:

**Consequences for tenant and landlord if report requirements not met**

- 36** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) [2 opportunities for inspection], and
  - (b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on sections 35 and 36 of the *Residential Tenancy Act*, I find that the landlord's right to claim against the security deposit is extinguished and the landlord must return the security deposit to the tenant.

The tenant applied for the return of double the deposit and for the filing fee. Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to the recovery of double the amount of the deposit.

The tenancy ended on August 02, 2019 and the landlord made application to keep the deposit in partial satisfaction of her claim within a timely manner, on August 13, 2019. Therefore, I find that the tenant is not entitled to the return of double the deposit. However the tenant is entitled to the return of \$1,700.00 which is the amount of the security deposit that is held by the landlord.

Since the tenant has not proven his claim, he must bear the cost of filing his application.

Overall the landlord has established a claim of \$1,302.70 and the tenant has established a claim of \$1,700.00. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$397.30 which consists of the difference between the established claims of the parties.

I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the amount of \$397.30. This order may be filed in the Small Claims Court and enforced as an order of that Court.

**Conclusion**

I grant the tenant a monetary order in the amount of **\$397.30**.

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: December 09, 2019

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Residential Tenancy Branch