



# 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 an Application for Dispute Resolution by the Landlord for monetary orders for damage and cleaning of the rental unit, for compensation under the Act and the tenancy agreement, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Although duly served with the Application for Dispute Resolution and Notice of Hearing by registered mail, sent on March 16, 2011, and deemed under the Act to be received five days later, the Tenant did not appear. I find the Tenant was duly served in accordance with the Act.

Two Agents for the Landlord appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

The parties entered into a written tenancy agreement which began on April 1, 2010, on a month to month basis. The Tenant paid the Landlord a monthly rent of \$695.00 and provided a security deposit of \$347.50 on March 15, 2010. Several terms were added to the tenancy agreement, the most relevant being there was to be no smoking in the rental unit. The Tenant initialled these additional terms. An Agent for the Landlord testified that at the time of renting she informed the Tenant the building was non-smoking and the Tenant informed the Agent she had recently quit smoking.

During the course of the tenancy, the Landlord received reports from other occupants of the building that there was the smell of smoking coming from the rental unit. The

Landlord issued the Tenant a warning letter and the Tenant replied in writing that she did not smoke in the rental unit.

In January of 2011, the Tenant gave her one month Notice to End Tenancy to the Landlord and vacated the rental unit on February 28, 2011.

The Agents testified that the Tenant did not participate in the outgoing condition inspection report.

The Landlord claims the Tenant smoked in the rental unit and did not completely clean the Ru when she vacated. The Landlord is claiming for the costs to clean and repaint the rental unit due to the condition it was left in by the Tenant and because of the smoking.

The Landlord claims as follows:

a.	General cleaning 10 hours @ \$15.00 per hour	150.00
c.	Window coverings, blinds	65.00
d.	Painting to cover smoke damage	175.00
e.	Filing fee	50.00
	<b>Total claimed</b>	<b>\$528.48</b>

The Agents testified that the rental unit had to be cleaned to remove the smell of smoke and the streaky yellow film from the smoke. This included but was not limited to the walls, cupboards, cupboard doors, kitchen stove and windows and sills. The blinds had to be removed and each vane had to be individually cleaned.

Following the cleaning, the walls had to be re-painted in order to cover the smell and stain of the smoking.

The Landlord submitted documentary evidence including photographs and invoices in support of the claims.

There was no evidence submitted by the Tenant.

### Analysis

Based on the testimony, evidence, photographs and a balance of probabilities, I find that the Tenant has breached the tenancy agreement by smoking in the rental unit, and has breached section 37 of the Act and the tenancy agreement by failing to clean the rental unit to a reasonable standard when she vacated.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I also find the Landlord mitigated its losses by using reasonable means to clean and repair the rental unit.

Therefore, I find that the Landlord has established a total monetary claim of **\$528.48**, comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the Landlord may retain the deposit of **\$347.50** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$180.98**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: June 21, 2011.

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Residential Tenancy Branch