



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WESTWYND REAL ESTATE SERVICES LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      MNSD, MND, FF

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for damages and for the filing fee. The landlord also applied to retain the security deposit in satisfaction of his claim.

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 tenant represented himself. The landlord was represented by their agent.

As both parties were in attendance, I confirmed service of documents. The tenant confirmed receipt of the landlord's evidence and stated that he did not file any of his own. I find that the tenant was 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 damages and the filing fee? Is the landlord entitled to retain the security deposit?

### **Background and Evidence**

The background facts are generally undisputed. The tenancy started on August 01, 2018 and ended on July 31, 2019. The monthly rent was \$1,575.00 payable on the first of each month. The rental unit was furnished. Prior to moving in the tenant paid a security deposit of \$787.50 which the landlord is currently holding.

A move out condition inspection was conducted on July 31, 2019 and a report was filed into evidence. The report indicates that the washroom sink was cracked, the furnished items were damaged, and the window coverings were not clean.

The tenant stated that some of the items that were provided by the landlord were of no use to him, so he boxed them and placed them outside in a sheltered area. The landlord did not check the contents of the boxes during the moveout inspection as he stated that he did not have the time to do so.

The landlord provided a list of the items that he is looking to replace which include a toaster oven, a two-slice toaster, an electric kettle, a muffin pan, a martini glass and a coffee table. The landlord stated that these items could not be used in a kitchen because having been outside for a year, they may have been exposed to insects, bugs and wild animals.

The landlord did not know the age of the items but estimated that they were at least 6 years old. He stated that he looked on line for sales of used items and came up with an estimate of what it would cost him to replace these items.

The landlord is claiming the following:

1.	Toaster Oven	\$25.00
2.	2 slice Toaster	\$10.00
3.	Muffin Pan	\$15.00
4.	Electric Kettle	\$20.00
5.	Martini Glass	\$4.00
6.	Coffee Table	\$100.00
	Total	<b>\$174.00</b>

The landlord testified that the washroom sink had an oval shaped crack in it and there appeared to be a point of impact which might have caused the damage. The landlord filed a photograph of the damage, but it was very difficult to see the damage and the alleged point of contact. The landlord was unsure of the age of the sink but agreed that it was possible that it was the original sink installed when the apartment building was constructed in 1998. The landlord is claiming the cost of replacing the sink.

The tenant denied having caused damage to the sink and stated that he informed the building manager when he first noticed the crack approximately 5-6 months into the tenancy.

The landlord stated that the window coverings were not clean at the end of the tenancy. The tenant stated that he had dusted them but had not washed them. The landlord filed photographs of the oven and the lint filter but has not recorded any discrepancies regarding these items on the move out inspection report. The tenant stated that the landlord only drew his attention to the cracked sink and informed him that everything else was okay.

The landlord is claiming the following:

1.	Replace washroom sink	\$355.10
2.	Cleaning	\$210.00
3.	Damaged items	\$174.00
	<b>Total</b>	<b>\$739.10</b>

The landlord filed photographs, a move out inspection and invoices to support his monetary claim.

The landlord found a new tenant for August 01, 2019 who moved in the same day as the tenant was moving out. The landlord had the unit cleaned on August 02, 2019 after the new tenant moved in.

### **Analysis**

#### 1. Replace washroom sink - \$355.10

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 sink. As per this policy, the useful life of a sink is 20 years. The landlord did not have information regarding when the sink was installed. Based on the age of the rental unit which was constructed in 1998, I find on a balance of probabilities that it is more likely than not that the sink is the original sink which was installed 21 years ago in 1998 and therefore I find that the sink has already outlived its useful life and will be required to be replaced at the landlord's cost. Accordingly the landlord's claim for \$355.10 is dismissed.

#### 2. Cleaning - \$210.00

The move out inspection report does not indicate any discrepancy with regard to cleaning.

However the landlord has filed a summary that states that the window coverings needed cleaning. The tenant stated that he dusted the window coverings, and this was not brought to his attention during the move out inspection.

A new tenant moved in the soon after the tenant moved out and the landlord had the rental unit deep cleaned on August 02, 2019.

The move out inspection is an opportunity for the tenant and landlord to identify damage and come to an agreement on any deductions that can be made to the security deposit. The inspection should be conducted diligently using a flashlight if necessary as it is the only opportunity to identify damage that the tenant is responsible for. The burden of proof is on the landlord to prove that the tenant is also responsible for additional damage that is identified after the end of tenancy.

In this case, the landlord spoke about the cabinets, the oven, the dryer lint trap and walls that needed cleaning. The landlord also filed photographs which have poor resolution and except for the lint trap, do not support the landlord's verbal testimony. In addition discrepancies regarding these items are not recorded on the move out inspection report and were not brought to the tenant's attention during the inspection.

Based on the above, I dismiss the landlord's claim for the cost of cleaning.

### 3. Damaged items - \$174.00

The landlord filed photographs of these items but did not know how old they were. He stated that the owner moved out of the rental unit and left these items behind for use by the tenant. The tenant stated that he had no use for them and therefore he boxed them and placed them in a sheltered area.

Based on the photographs and the testimony of both parties I find that these items were used and were at least six years old. I accept the tenant's testimony that he had no use for them and therefore he boxed them and stored them in a covered area. The landlord filed photographs showing the boxes and their contents.

Based on the above, I find that the owner left these items behind as he had no use for them and that they have little to no value based on the age of the items. Accordingly the landlord's claim for these items is dismissed.

Since the landlord has not proven his claim, I find that he is not entitled to the recovery of the filing fee of \$100.00.

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 not established a claim against the security deposit (\$787.50), it is appropriate that I order the return of the tenant's security deposit. I so order and I grant the tenant a monetary order in the amount of \$787.50. This order may be registered 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 **\$787.50**.

The landlord'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: November 27, 2019

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Residential Tenancy Branch