



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; authorization to retain the security deposit and pet deposit; and, recovery of the filing fee. The tenant did not appear at the hearing. The landlord testified that she served the tenant with the landlord's Application for Dispute Resolution by registered mail sent to the forwarding address provided by the tenant in writing in a letter dated April 9, 2010. The landlord stated that the registered mail was returned as unclaimed. The landlord provided a copy of the returned registered mail and the tenant's letter of April 9, 2010 as proof of service. The landlord testified that she served the tenant with the landlord's evidence in person in a parking lot at the tenant's place of employment on September 17, 2010. Having been satisfied the tenant was sufficiently served in a manner that complies with the Act, I proceeded to hear from the landlord without the tenant present.

### Issues(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit and if so, the amount?
2. Has the landlord established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement, and if so, the amount?
3. Is the landlord authorized to retain the tenant's security deposit and/ or pet deposit?

### Background and Evidence

I was provided the following undisputed evidence. The tenant and a co-tenant entered into a tenancy with the landlord for a tenancy set to commence April 1, 2009. A \$600.00 security deposit had been paid March 12, 2009 and a \$600.00 pet deposit was paid by way of \$50.00 instalments. The co-tenant vacated the rental unit and the tenant and the landlord entered into a new tenancy agreement set to commence February 1, 2010 on a month-to-month basis. The tenant was required to pay rent of \$1,200.00 on the 1<sup>st</sup> day of every month although the parties had agreed that the tenant could deduct \$100.00 per month if the tenant maintained the yard. The tenant was required to pay utilities.

I was also provided evidence that the tenant gave the landlord a written notice dated March 31, 2010 to end tenancy effective at the end of April 2010. In the tenant's notice the tenant states the landlord may retain the security deposit and pet deposit in lieu of paying rent for April 2010 and that a move-out inspection was not necessary. The tenant provided a written forwarding address to the landlord in a letter dated April 9, 2010. On April 30, 2010 the landlord arrived at the rental unit and the tenant was not present. The landlord posted a Notice of Final Opportunity to Schedule a Condition Inspection for April 30, 2010 at 7:00 p.m. The tenant did not appear at that inspection. The following day the landlord entered the property with a witness and completed the move-out inspection report.

The landlord described the following damages during the hearing. The laundry and storage area had plywood floors which were smelled of cat urine. The rental unit smelled of cigarette smoke and the rental unit was unclean. The tenant did not maintain the yard.

The landlord requested compensation for the following:

Unpaid rent – April 2010	\$1,200.00
Unpaid water bill	93.12
Replacement of laundry room floor & laundry cleaning	388.50
Sealing/priming and painting of rental unit	1,312.50
NSF charge re: November 2009 rent cheque	25.00
Bylaw infraction (subsequently withdrawn)	nil
Septic pumping (invoice \$455.70)	300.00
Cleaning and gardening	<u>400.31</u>
Monetary claim	\$ 3,719.43

Upon enquiry, the landlord testified as follows. The floor replacement included an estimate of \$150.00 for 3 1/2 sheets of plywood and 8 hours of labour at \$40.00/hour. The painting charge is comprised of \$112.03 for materials and 48 hours of labour at \$25.00/hour. The house was last painted approximately two years ago.

With respect to the septic pumping I heard that the tenant had complained the toilet was not flushing properly. The landlord's husband attended the property on a couple of occasions to respond to the complaints. The tenant's boyfriend subsequently opened up the septic tank and dropped the lid in which required the tank to be pumped. Upon pumping the tank it was discovered that certain item were found in the tank that cannot be placed in a toilet on a septic system. The landlord claims that she had informed the tenant not to put anything but toilet paper in the toilet. The landlord could not recall exactly when the tank was last pumped but claimed that it was pumped every few years and that it had not given problems before this tenancy.

Provided as evidence for the hearing were numerous photographs of the rental unit at the end of the tenancy; some pages of the tenancy agreements; the condition inspection reports; communication between the parties; invoices; and a detailed breakdown of the landlord's time spent cleaning and gardening.

### Analysis

Under the Act a tenant must pay rent when due in accordance with the terms of the tenancy agreement. A tenant may not use a security deposit or pet deposit in lieu of rent unless the landlord gives written consent. I was not provided evidence the landlord provided written consent to the tenant to use the deposits in lieu of rent. Upon review of the tenancy agreement and the tenant's notice to end tenancy I accept that the tenant was obligated to pay rent of \$1,200.00 for the month of April 2010 and I award that amount to the landlord.

Upon review of the tenancy agreement I accept that the payment of rent did not include water supply. Therefore, I find the tenant obligated to pay for water. The water bill submitted by the landlord is \$89.24 for the period of March 20 – May 14, 2010. I find the tenant obligated to pay for water up to April 30, 2010 and I prorate the bill and award the landlord as follows:  $\$89.24 \times 42 \text{ days} / 56 \text{ days} = \$66.93$ .

Upon review of the condition inspection report I accept that the laundry and storage area smelled of cat urine. However, a party that makes a claim for damages or loss must show they did everything reasonable to minimize their damage or loss. It is unclear to me that the plywood floor was sealed and upon review of the pictures I note that this area is adjacent to an exterior door. It is reasonable to expect that this area would endure considerable use. I find an unfinished plywood floor likely subject to deteriorate more quickly than more suitably finished flooring. Therefore, I find the landlord must absorb a portion of the costs to replace the floor and I award the landlord 50% of the costs associated to the damaged flooring.

A party that makes a monetary claim against another must also prove the quantum of their claim. I was not provided evidence to prove the cost of the new plywood for the floor and I cannot verify the cost of materials. I was provided testimony that eight hours were spent ripping up the old floor and installing the new floor and I accept that submission as reasonable. However, I find the claim of \$40.00 per hour to be excessive. I find a reasonable award to the landlord is 8 hours x \$25.00 per hour. Therefore, I award the landlord 8 hours x \$25.00 x 50% as being the tenant's liability for the damaged flooring for a net award of \$100.00.

Upon review of the condition inspection report and the landlord's testimony I accept that the rental unit smelled of smoke and needed to be sealed and painted. Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. Residential Tenancy Policy Guideline 37 provides that interior painting has a useful life of four years.

The landlord did not provide proof of the cost of painting materials and claimed the paint was in stock. I find I am unable to verify the landlord's material costs. I accept that the landlord spent a total of 48 hours priming and painting the house and \$25.00 per hour is reasonable. I estimate that half of that time was spent priming/sealing the walls and half of that time was spent painting. I award the landlord 24 hours for sealing the walls for cigarette smoke. Factoring in natural depreciation of interior paint I award the landlord one-half of the time spent painting. The landlord is awarded as follows:  $[(24 \text{ hours} \times \$25.00/\text{hr for priming/sealing}) + (24 \text{ hours} \times \$25.00/\text{hr} \times 50\% \text{ for painting})] = \$800.00$ .

With respect to claiming NSF charges a landlord must show that this is a term agreed upon in the tenancy agreement pursuant to section 7 of the regulations. The landlord did not provide all pages of the tenancy agreement and I cannot verify NSF charges

were provided for in the tenancy agreement. Therefore, I do not award this amount to the landlord.

The landlord provided evidence that the septic tank was pumped October 24, 2009. While the tenant's boyfriend caused the septic lid to fall in the tank which required it to be pumped immediately I also heard that the septic system was problematic before the lid was dropped. Septic tanks require regular servicing and pumping and upon hearing the toilet was clogging I find that it is likely the tank had to be pumped regardless of the lid falling in.

I was not provided sufficient evidence as to when the last time the septic tank was pumped. Having heard that the property was previously tenanted I am not reasonably assured that this tenant caused the foreign objects to be in the tank. Nor was I provided evidence that the tenant been advised the house was serviced by a septic system prior to the tank being pumped such as inclusion in the tenancy agreement or addendum to the tenancy agreement. For all of these reasons, I deny the landlord's claim for septic pumping against the tenant.

Upon review of the condition inspection report and the landlord's evidence I accept that the rental unit was not left reasonably clean. Upon review of the landlord's detailed account of time spent cleaning I find the landlord has shown that 16.25 hours were spent cleaning, including the washer and dryer, and gardening. I award the landlord 16.25 hours at \$25.00 per hour. However I reduce this award by \$100.00 as this was the amount the landlord had credited the tenant for doing yard work. Since I have awarded the landlord the full rent above to award the landlord full rent and award the landlord for yard work would be double counting. Therefore, the landlord is awarded  $(16.25 \text{ hours} \times \$25.00/\text{hour} - \$100.00) = \$306.25$ .

I authorize the landlord to retain the tenant's security deposit and pet deposit in satisfaction of the rent owed the landlord. I also award the filing fee to the landlord.

In light of the above findings, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent – April 2010	\$ 1,200.00
Water bill	66.93
Damaged laundry/storage room floor	100.00
Priming/sealing and painting	800.00
Cleaning and gardening	306.25
Filing fee	50.00
Less: security deposit and pet deposit	<u>(1,200.00)</u>
Monetary Order for landlord	\$ 1,323.18

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

### Conclusion

The landlord was partially successful in this application. The landlord has been authorized to retain the tenant's security deposit and pet deposit and has been provided a Monetary Order for the balance of \$1,323.18 to serve upon the tenant.

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 06, 2010.

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Dispute Resolution Officer