



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes MNR, MND, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for monetary orders for damage to the rental unit, for unpaid rent, for compensation under the Act and the tenancy agreement, to retain all or part of the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issue(s) to be Decided

Are the Landlords entitled to monetary compensation from the Tenant?

### Background and Evidence

This tenancy began on March 1, 2010, with the parties entering into a written tenancy agreement. The monthly rent was set at \$1,050.00, payable on the first day of the month, and the Tenant paid a security deposit and pet damage deposit totalling \$1,050.00.

The Tenant vacated the property on or about October 23, 2010. At the outgoing condition inspection report the Landlord had listed several items to be repaired at the Tenant's expense, however, the Tenant did not agree to these and refused to sign over a portion of the deposits to the Landlords. The Landlords returned a portion of the deposits to the Tenant and then filed their claim within 15 days of the end of the tenancy. The Landlords repaid the Tenant \$315.66 of the deposits and the Tenant acknowledged receipt of this amount.

The Landlords claim \$134.34 in damages against the Tenant, comprised of \$73.15 for seed, mulch and fertilizer for repairing patches on the lawn, \$50.40 for repairing a window screen, and \$11.19 to replace a shower curtain.



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The Landlords are also claiming the Tenant failed to pay all the rent due for October of 2010, and owes the Landlords \$525.00. The Landlords also claim for two late payment fees of \$25.00 each, totalling \$50.00

The appearing Landlord testified that the Tenant did not pay all of the rent for October of 2010, and a cheque the Tenant had given to the Landlords was returned due to a stop payment on the cheque. The Landlords also claim for a late payment of rent in June of 2010.

The Landlord testified that the Tenant had a swimming pool, trampoline and gazebo in the back yard of the rental unit property. The Landlords claim the swimming pool damaged portions of the lawn and they had to re-seed the areas, and apply mulch and fertilizer.

The Landlord testified that the Tenant informed him that he could rent the rental unit before the end of October. He was showing the rental unit to prospective renters and noticed a window screen was torn. He had a handy man come in the next day and repair the screen.

The Landlord also testified that the shower curtain in the rental unit was moldy and wanted the Tenant to pay for its replacement.

In reply, the Tenant testified that she had provided evidence, in the form of emails, explaining her bank had made an error on her June rent payment and that was why it was late.

The Tenant testified that she took down the swimming pool when the Landlords expressed a concern about it damaging the lawn. She testified that on the day the Landlord was reseeding the lawn he asked her to pay for the seed. The Tenant's testimony was that she told the Landlord that it was not fair for her to have to pay for the seed when she had to do all the mowing in the yard, as the other renters at the property did not do it. The Tenant testified that she and the Landlord had an oral agreement she would not have to pay for the seed if she continued to mow the lawn every week. She testified she did mow the lawn every week until around the last week of the tenancy.

In reply, the Landlord agreed he had made this arrangement with the Tenant, although he reconsidered this agreement when they were doing the outgoing condition inspection report.

The Tenant also testified that she was not aware the window screen required repairs and the Landlord had repaired this before she vacated the rental unit. The invoice for this repair indicates the work was done on October 17, 2010, and was supplied in evidence by the Landlords.

The Tenant also testified that she had not used the shower curtain in the rental unit and found it unusual for a curtain to be supplied. When she moved in she took it down to put up her own shower curtain, and when she vacated she put up the Landlords' curtain.

## Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant has breached the Act and tenancy agreement by failing to pay all rent due and by failing to pay the late fees as required under the tenancy agreement.

Regardless of the bank error, the Tenant was responsible to the Landlords to pay this late fee under the tenancy agreement. The Tenant might consider approaching her bank for a refund of this \$25.00 fee, which I grant to the Landlords.

I find the Landlords had an oral contract with the Tenant that she would not have to pay for re-seeding the lawn if she mowed the grass at the rental unit. I accept the evidence of the Tenant that this was done and find the contract was performed. Therefore, I dismiss this portion of the Landlords' claim.

I find that the Landlords failed to notify the Tenant of the damaged screen and the Tenant still had possession of the rental unit at the time the repairs were made. The Tenant had the right to make this repair and the Landlords' prevented her from doing so. Therefore, I dismiss this portion of the Landlords' claim.

I find that the Landlords' loss of use of the shower curtain is reasonable wear and tear, and I dismiss this portion of the Landlords' claim.



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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.

Based on the above, I find that the Landlords have established a total monetary claim of **\$600.00** comprised of \$525.00 due in unpaid rent, \$50.00 for two late fees as set out in the tenancy agreement and \$25.00 towards the fee paid for this application. (As the Landlords have only been partially successful in their claims, I only award them a portion of the filing fee for the Application.)

I order that the Landlords retain \$600.00 from the deposits held (no interest is payable in 2010), of \$1,050.00 in full satisfaction of the claim.

The Landlords have already paid the Tenant back \$315.66, and therefore the balance of **\$134.34** is owed to the Tenant by the Landlords. (Calculated as  $1,050.00 - (600.00 + 315.66) = \$134.34$ ).

I grant the Tenant an order under section 67 for the balance due of **\$134.34**.

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: January 06, 2011.

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Residential Tenancy Branch