



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

### Dispute Codes

MND, MNSD, MNDC, FF

### Introduction

This matter dealt with an application by the landlord to obtain a Monetary Order for damage to the unit, site or property, a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, an Order to keep the tenants security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent by registered mail to the tenant on September 15, 2010. The landlord states she sent the tenant her evidence package with the Notice of this hearing. The tenant first agreed he had received the photographic evidence then stated later in the hearing he had not received the landlords evidence.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the security deposit?

### Background and Evidence

Both parties agree that this tenancy started on March 01, 2009. This started as a fixed term tenancy which expired on February 28, 2010 and a new agreement was entered into on a month to month basis. Rent for this unit was \$1,485.00 per month and was due on the first of each month. The tenant paid a security deposit of \$750.00 of which \$400.00 was paid on February 06, 2009 and \$350.00 was paid on February 13, 2009.

The landlord testifies that the tenant attended a move in condition inspection and signed to agree that the unit was in very good condition, with all appliances new and in good working order and the unit, including the front and back yards, are clean and tidy. This letter has been provided in evidence and is dated February 21, 2009. The tenant states he did not receive a copy of this letter and the inspection was done on February 13, 2009.

The landlord testifies the tenant was given at least two opportunities to attend a move out condition inspection but he failed to attend. The landlord has provided copies of letters posted at the unit requesting the tenant to contact the landlord to do the inspection. The tenant denies receiving these letters and states the arrangements were made with the landlord to do the inspection but they cancelled the dates.

The landlord testifies that the tenant did not return the keys to the unit after he moved out and her son had to climb through a window to get into the unit. The landlord states the locks had to be changed on all three doors. Each door had two locks and the landlord has able to obtain a discount on the locks at a sum of \$75.00 and her son fitted them at a cost of \$100.00.

The landlord states the unit was left in a disgusting condition. The tenant had not cleaned the unit and had left dog hair everywhere. The landlord had to rent an industrial vacuum cleaner to clean the floors of the unit. The landlord states the tenant had not cleaned behind the fridge or stove and had left food in the fridge. The fridge and stove were both left filthy. The landlords' agent testifies that it took him four hours to clean the stove and three hours to clean the fridge. The landlord testifies that the bathrooms had not been cleaned. The landlord also states she found dog feces in the downstairs bedroom. The landlord seeks to recover the sum of \$160.00 for cleaning the unit.

The landlord testifies they found an excessive number of holes in the walls caused by the tenant. She states she also found scratches on the door and the walls around the door caused by the tenants' dog. The landlord testifies that they had to fill and sand each hole and then had to paint the entire unit. The landlord seeks to recover the sum of \$1,785.00 for paint supplies and their labour costs as the landlords son was able to repaint for them. The landlord states she purchased two five litre drums of paint at a cost of \$160.00 a drum and used approximately eight litres of this paint. The landlord had provided photographic evidence showing damage to the walls.

The landlord testifies that they found extensive water damage in the cupboard under the sink. This was caused by a leaky faucet. However, the tenant had not informed the landlord of this and refused to give the landlord access to the house. The landlord seeks to recover the sum of \$220.00 for repairs to the water damaged cupboard and \$175.00 for the replacement faucet and installation. The landlords' agent testifies that it appears as if someone had tried to repair the faucet.

The landlord testifies that when the tenant moved in there was a wooden canopy over a door which had been erected by a professional carpenter. During a party they state the tenant or his guests pulled down the canopy which caused damage to both the wall and the canopy. The tenant was aware of this damage and agreed to replace the canopy when he signed the renewal for his tenancy on February 02, 2010 (letter provided in evidence). The landlord states the tenant has not replaced the canopy. They state they have had an estimate to replace this at a sum of \$425.00 but have not yet made these repairs and the estimate was verbal with the contractor.

The landlord testifies that the tenant was responsible for lawn maintenance and she provided him with a lawn mower in working condition at the start of his tenancy. The landlords' agent testifies that the tenant did some lawn maintenance at the front of the property but the back lawn had not been cut for some time. The landlords' agent states he had to cut the lawn three times as it was so long and he had to pick up at least three bags of dog faeces left behind by the tenants' dog. The landlords' agent testifies that he did this work after the tenants moved out on the day the landlords son entered the unit through the window. The landlord seeks to recover the sum of \$215.00 for this work.

The landlord testifies that they lost a months' rent due to the condition of the unit at the end of the tenancy. Prospective tenants were put off by the units condition when it was shown and they could not re-rent it until October 01, 2010 after some of the repair work and cleaning were completed. The landlord seeks to recover a loss of income for September, 2010 from the tenant to the sum of \$1,485.00.

The tenant disputes the landlords' claims. The tenant testifies that he took 158 photographs of the unit before he moved in to show its condition but has not provided these in evidence. He states after they signed the move in letter he found many holes in the walls and mould in some areas. He states he found out the house had been a previous grow op. The tenant states he did not notify the landlord of these things at the beginning, or during his tenancy as the landlord was difficult to get hold of.

The tenant testifies that the kitchen faucet leaked. He claims this was a slow leak and he put a bucket under it. Sometime later towards the end of his tenancy he found water damage in the kitchen cupboard. The tenant agrees that he did not inform the landlord of this leak.

The tenant testifies that the canopy did come down but was not pulled down by him or his guests. He states it came done in a storm. The tenant agrees that he initially agreed to have this canopy put back up but states he found it had been improperly fixed to the building originally and so felt the fixings would not be safe.

The tenant testifies that he left a set of keys to the unit inside the unit when he moved out he states he assumed the landlord had copies of the keys and therefore disputes the lock replacement costs. He also states one of the deadbolt locks on a door was broken when he moved in.

The tenant testifies that he spent a whole day cleaning the unit before he moved out. He disputes the landlord had to hire an industrial cleaner as the floors are wood with the exception of the stairs. The tenant agrees he did not clean behind the fridge or stove and did not clean the stove. The tenant testifies that he did maintain the lawns and he found the landlords agent on the property, three days before he moved out, cutting the grass. Therefore, he states the landlord did not give him opportunity to cut the grass before he vacated.

The tenant disputes he is responsible for damage to the unit and is therefore not responsible for the landlords' loss of rent for September, 2010.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. The tenant states that he had received the landlords' photographic evidence and later in the hearing he then denied he had received this evidence. As I find the tenant has contradicted his statement I can place little weight on the tenants claim that he did not receive the landlords' evidence package and it is my decision that the landlords' evidence has been received by the tenant for the purpose of this hearing.

With regard to the landlords claim for damages; when making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find the tenant did sign a document at the start of the tenancy agreeing that the unit, was in a very good condition, with all appliances new and in good working order and the unit, and the front and back yards, were clean and tidy. If the tenant then found areas in the unit that contradicted this statement he should have notified the landlord of these items at the start of his tenancy. As the tenant failed to do this and as he has provided no evidence to support his claim that the walls had holes in, there was mould or the unit had previously been used as a grow op; it is my decision that the tenant is responsible for most damage and cleaning to the unit which is beyond normal wear and tear as determined under the Residential Tenancy Policy Guidelines #1.

However, with regard to the landlords claim for painting the landlord has testified that she purchased 10 litres of paint to repaint the unit but has not provided any receipts to show the actual cost of the paint. Consequently, the landlords' claim of \$1,785.00 will be reduced to

reflect this and I have deducted the alleged cost of the paint. Therefore, the landlords claim for painting the unit is reduced to **\$1,465.00** for labour costs only pursuant to s. 67 of the *Act*.

With regard to the damage to the kitchen cupboard; I find the landlord has provided sufficient evidence to show that there was a leak under the kitchen cupboard. Both Parties agree that the tenant failed to notify the landlord of this leak and although the tenant claims he did not know it had caused damage to the cupboard he did know there was a leak as he claims he put a bucket under it. Therefore, I find the tenant was negligent in informing the landlord of this leak to enable him to make necessary repairs before further damage was caused. Therefore, the landlord is entitled to recover the sum of **\$220.00** to repair the damage to the cupboard pursuant to s. 67 of the *Act*.

With regard to the landlords claim for new faucets and installation; I find the landlord has not shown that the tenant is responsible for damage to the faucets through a deliberate action or neglect. Therefore, this section of the landlords claim for \$175.00 is dismissed.

With regards to the landlords claim for replacement locks; if the tenant had found a lock that was not in good working order he should have notified the landlord. As the tenant failed to do so I can place little weight on his claim that one of the locks did not work. The tenant also argues that he is not responsible to pay for replacement locks as he left a set of keys in the rental unit. I find on a balance of probability that these keys were not left at the unit due to the fact that the landlord spent time and money in having the locks replaced. The landlord has not however provided any receipts showing the actual cost of the locks; therefore, I find the landlord has established her claim for labour costs only of **\$100.00** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for cleaning the unit; the tenant agrees that he did not clean the stove or behind the fridge and stove. The landlord argues that the tenant did not clean the unit at all and left it in a filthy condition. I find in this matter I prefer the evidence of the landlord due to the fact the tenant did not remove dog feces from the floor in the unit and left areas in the kitchen unclean. I find the landlords' claim of **\$160.00** to be reasonable for cleaning these areas alone and find she may recover this sum from the tenant pursuant to s. 67 of the *Act*.

With regards to the landlords claim for lawn maintenance; the tenant argues that the landlord came and cut the grass three days before the end of his tenancy and did not therefore allow him the opportunity to cut the grass before he moved out. The landlord argues that he cut the grass and picked up a substantial amount of dog feces after the tenant moved out. When one Party's testimony is contradicted by the other Party the person making the claim i.e. the landlord must provide corroborating evidence to meet the burden of proof. In this matter I find the landlord has not met the burden of proof that the grass was cut after the tenant moved out and therefore I dismiss her claim for \$215.00.

With regard to the landlords claim for repairs to the canopy; it is my decision that this damage was caused by the tenant or his guests as the tenant did agree to replace or repair the canopy when he renewed his tenancy with the landlord. I find the tenant has provided no evidence to show that the canopy had not been fitted correctly when it was originally erected. However, as this work has not yet been completed the landlord has not provided an invoice or written estimate for the actual cost of making this repair. Therefore this section of the landlords claim is dismissed with leave to reapply.

With regard to the landlords claim for a loss of income for September, 2010; The Residential Tenancy Policy Guidelines # 3 state: *Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.* As I have found the tenant is responsible for most of the damage and cleaning in the rental unit and due to the work involved in rectifying this damage and cleaning it is my decision the landlord was unable to rent the unit for September despite efforts on her part to remedy this in a timely manner. Therefore, I find the landlord has incurred a loss of income for this month and is entitled to recover the sum of **\$1,485.00** from the tenant pursuant to s. 67 of the *Act*.

As the landlord has been partial successful with her claim she is entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

The landlord originally applied to recover the sum of \$2,152.50 after the security deposit was kept; however, the landlord miscalculated the rent and security deposit and some repair costs.

These figures have been adjusted in the landlords' documentary evidence. The total amount of the landlords claim was amended to \$4,640.00 before the removal of the security deposit.

I Order the landlord to keep the security deposit of **\$750.00** in partial satisfaction of her claim pursuant to section 38(4)(b) of the *Act*. A Monetary Order has been issued for the following amount:

Labour costs for painting	\$1,465.00
Labour to replace locks	\$100.00
Cleaning costs	\$160.00
Loss of income for September, 2010	\$1,485.00
<b>Subtotal</b>	<b>\$3,430.00</b>
Plus filing fee	\$50.00
Less Security deposit	(-\$750.00)
<b>Total amount due to the landlord</b>	<b>\$2,730.00</b>

### Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,730.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlords claim for damage to the canopy is dismissed with leave to reapply.

The remainder of the landlords claim is dismissed without leave to reapply.

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 18, 2011.

---

Residential Tenancy Branch