



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MND, MNR, MNSD, MNDC, FF, O

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

At the outset of the hearing the parties confirmed that the tenant had vacated the rental unit prior to this hearing. The landlord noted there was no longer a need for an order of possession. I amend the landlords' Application to exclude the matter of possession.

The tenant stated that she had substantial documentary evidence that she was told by a Service BC agent that she would be given an address to send the evidence to but that she never received the address.

I referred the tenant to the Notice of Dispute Resolution Hearing documents that provide instruction that the evidence must be served to the other party and to the Residential Tenancy Branch and the deadlines for the service of evidence as per the Residential Tenancy Branch Rules of Procedure (i.e. 5 days prior to the hearing). The tenant acknowledged she understood the requirements.

### Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent; for cleaning and repairs; for compensation; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlords provided a copy of a tenancy agreement signed by both parties on April 26, 2010 for a month to month tenancy beginning on June 1, 2010 for a monthly rent of \$1,400.00 due on the 1<sup>st</sup> of each month with a \$700.00 security deposit paid on April 26, 2010.

The tenant testified she vacated the rental unit prior to July 31, 2011 and that she returned the keys to the landlord on August 2, 2011.

The landlords seek compensation in the amount of \$400.00 for rent for the month of May 2011. The landlord testified the tenant's boyfriend had promised to complete some work on a retaining wall in exchange for \$400.00 that was considered as partial payment for rent for May 2011.

The landlord testified that the work had been completed but they later found it deficient and not acceptable for payment for the work completed. The tenant testified she had receipts confirming that her payment of \$530.00 for May 2011 rent constitutes full payment in conjunction with the \$400.00 and an additional \$470.00 for supplies to complete the work.

The landlord asserts the tenant failed to pay the full rent for July 2011 and seeks the balance of the arrears in the amount of \$400.00. The tenant does not dispute that she owes the landlords this amount.

The landlords request compensation to repair damage to cupboards in the rental unit caused by the tenant taping items to the cupboard doors. The landlords seek the cost of melamine paint (\$45.00) and labour (3 hours at \$20.00 per hour). The tenant acknowledges the damage but disagrees with the amount of labour proposed by the landlords to paint the doors.

The landlords also seek costs to paint an exterior wall because of staining from a fire caused by a fire in a couch that was up against the exterior wall. The landlords seek the cost of paint (\$75.38) and labour (3 hours at \$20.00 per hour). The landlord asserts the entire wall requires painting to ensure colour matching.

The tenant does not dispute the fire occurred but contends the damage is the size of a basketball and is not substantial. The tenant testified that she had cleaned the wall extensively and as a result the remaining damage was minimal and painting is not required.

The landlords have applied for compensation for cleaning the driveway and street because of oil stains the landlord attributes to the tenant's vehicle. The landlords seek the cost of oil remover and pressure washers rental in the amount of \$100.00 and labour (6 hours at \$20.00 per hour). The landlord contends the tenants were asked to park over a piece of cardboard but that they repeatedly failed to do so.

The tenant contends that in particular on the street, many people park there and the landlords cannot blame the tenant for all of the oil on the street. The tenant also testified that they did use a piece of cardboard every time they parked.

The landlords also seek compensation for two bathroom fans as she states the tenant had the fans going constantly through the duration of the tenancy. The landlords seek

\$73.49 for fan replacement and labour (4 hours at \$20.00 per hour). The landlord confirms the fans are working but are extremely loud.

The landlords request compensation to repair a gold chain that was damaged when the tenant and the landlord got into an altercation when discussing issues of their children and whether they should see each other.

The landlords are also looking to obtain compensation for not being able to rent out the unit immediately after the end of the tenancy because the tenant persuaded potential tenants to not move in. The landlords seek \$700.00 or the equivalent of ½ month's rent.

The tenant testified that when a prospective tenant was viewing the unit he told her that he was thinking of moving in with his two children and pregnant wife. The tenant went on to say that she told him that it probably wouldn't be good because among other things the landlords upstairs were drug dealers and people were coming and going all the time and it would not be suitable for a family.

### Analysis

To be successful in a claim for damage or loss the party making the claim must provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. The damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. The steps taken to mitigate the damage or loss.

In relation to the landlords' claim for rent for the month of May, 2011, I find that the landlord accepted as a payment of rent the funds the landlords had paid to the tenant's boyfriend for work completed. Despite the method of payment between the parties (reduction of May 2011 rent) the work that was contracted between the parties is unrelated to the tenancy and is therefore not rent.

In addition, the compensation sought for repair of a necklace results from an altercation between the landlord and the tenant related their children and again is not related to the tenancy.

As such I decline jurisdiction on these two matters (losses for work completed and losses related to a physical altercation). If the landlords have suffered a loss from these events the landlords remain at liberty to pursue those losses through a court of competent jurisdiction.

I accept that both parties agree the tenant owes \$400.00 for rent for the month of July 2011. I note that while the landlords had sought late fees in relation to both May and July rent, the tenancy agreement does not allow for late fees and therefore, I find the

landlord is not entitled to any compensation for late fees. I also accept that the tenant acknowledges responsibility for damage to the cupboard doors.

Section 32 of the *Act* requires a tenant to repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

Based on the photographs submitted by the landlord I am persuaded by the tenant's position that 3 hours worth of labour is not required to paint the few door panels that are required. I find one hour would be a reasonable estimate of time. I find the landlords are entitled to compensation for the cost of the paint and 1 hour of labour for a total of \$65.00.

I accept that both parties acknowledge the tenant (or a person permitted on the property by the tenant) was responsible for the fire damage. I am not persuaded, however, by the tenant's testimony that the painting is not required. I find the tenant must cover the costs of painting and labour to restore the impacted portion of the exterior wall of the residential property in the amount of \$135.38.

In relation to the landlord's claim for cleaning the driveway and street (removal of oil stains), I find the landlord has failed to provide sufficient evidence to support the stains were caused solely by the tenant's vehicle; that the landlord has any responsibility to clean the street at all; or even the value of the costs the landlord is suggesting are required to complete the cleaning. As such, I dismiss this portion of the landlord's claim.

Despite the landlord's assertion that the bathroom fans are loud and this results from the tenant's inappropriate use of the fans, the landlord has confirmed the fans in the bathrooms work. As such, I find the landlord has not established that she has suffered any damage or loss. I dismiss this portion of the landlords' Application.

Based on the tenant's own testimony, I accept the landlords' ability to re-rent the rental unit in a timely fashion and for as soon as possible after the end of this tenancy was impacted greatly by the tenant's interaction with at least one prospective tenant and as such, I find the landlords are entitled to compensation. I accept the amount of \$700.00, the equivalent of ½ month's rent to be reasonable, in this instance.

### Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,350.38** comprised of \$400.00 rent owed; \$200.38 for repairs; \$700.00 compensation for interfering with the landlords' ability to re-rent the unit; and the \$50.00 fee paid by the landlords for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$700.00 in partial satisfaction of this claim. I grant a monetary order in the amount of

**\$650.38.** This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: August 12, 2011.

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Residential Tenancy Branch