



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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; and, authorization to retain all or part of the security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

On a procedural note, the application was amended to correctly spell the tenant's name by consent.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit?
2. Has the landlord established an entitlement to other damages or loss under the Act, regulations or tenancy agreement?
3. Is the landlord authorized to retain all or part of the security deposit?

### Background and Evidence

The parties provided the following undisputed evidence as to the following tenancy related information. The tenancy commenced December 1, 2009 and ended April 1, 2011. The tenants paid a \$400.00 security deposit and were required to pay rent of \$800.00 on the 1<sup>st</sup> day of every month. No move-in or move-out inspection report was prepared by the landlord.

Below I have summarized the landlord's claims against the tenant and the tenant's response to the claims.

<u>Item</u>	<u>Amount</u>	<u>Landlord's reason</u>	<u>Tenant's response</u>
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Damaged door	314.00	Door was damaged during tenancy. Cost to replace door and estimated time to paint, install hardware and hang door.	Acknowledge interior door damaged during tenancy. Cost of door is \$102.00 at home depot.
Gas bill	Nil	Withdrawn.	
Dead shrubs	300.00	Tenant responsible for yard maintenance. Tenant did not water shrubs and they died.	Tenant had noted that some trees were dead or dying from disease or lack of spraying but this was not tenant's responsibility.
Broken lawn mower	500.00	Not maintained by tenant.	Not tenant's responsibility.
Total claim	\$ 1,734.00		

Both parties provided print-outs showing the cost of a similar interior door. The landlord provided a written statement of his cleaner and a breakdown of costs. The landlord provided photographs taken before the tenancy and after the tenancy as well as a written statement of another person who saw the property at the end of the tenancy. The landlord did not provided estimates or receipts with respect to shrubs or the broken lawn mower.

The tenant pointed out that there were no condition inspection reports prepared by the landlord and that the landlord did not show up at the house to do an inspection at the end of the tenancy; thus, the landlord did not establish the amount of cleaning or damage done to the house.

The tenant provided an alternative position with respect to cleaning. The tenant was of the position that if he is held responsible for cleaning costs, that he be charged the amount that he would have paid his own cleaner. The tenant submitted that the amount paid to the landlord's cleaner was excessive and that he would have paid his cleaner \$260.00.

The tenant also submitted that the charge for dumping garbage, including in the cleaning cost, was excessive as well. The tenant provided receipts showing dump fees range from \$13.00 - \$17.00 for a full truck load.

The tenant provided a written statement from a person who made a statement as to what she would have charged the tenant for cleaning. The tenant also provided a written statement from a person who stated she helped the tenant pack and clean the house before moving out.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of all of the evidence before me I make the following findings and provide the following reasons.

### ***Cleaning, cleaning supplies and garbage removal***

Under the Act, a tenant is required to leave a rental unit in a reasonably clean state at the end of the tenancy. Upon review of the photographs, and upon hearing from both parties, I find the tenant did not leave the rental unit reasonably clean. I heard disputed testimony that the landlord waived his entitlement to regain the rental unit in a reasonably clean state which revolved around an alleged telephone conversation. Where both parties agree on the content of a verbal agreement there is no reason it cannot be enforced, unless it violates the Act. However, difficulty arises when parties recall or provide different versions of events.

I find the disputed verbal testimony insufficient to conclude the landlord waived his entitlement to receive the rental unit in a reasonably clean state. Therefore, I find the tenant responsible for costs associated to bringing the rental unit up to a reasonably clean state.

The photographs taken by the landlord satisfy me that the rental unit required a significant amount of cleaning. Further, much of the written statements made by the landlord's cleaner are supported by the photographs. I find the cleaner's detailed

account of the cleaning she performed to warrant her charge of \$480.00 to the landlord, plus cleaning supplies of \$65.00. I find the tenant's estimate for cleaning holds less evidentiary weight than the landlord's evidence, as described above, as it does not provide a detailed breakdown of the tasks that would have been performed and it does not indicate that the cleaner viewed the house at the end of the tenancy. Therefore, I award the landlord the cleaning charge of \$480.00 plus cleaning supply costs of \$65.00 as claimed.

The tenant acknowledged that garbage was left behind at the property; however, the tenant submitted that the landlord's request for \$75.00 for garbage removal was excessive. While I accept that dump fees may cost approximately \$13.00 - \$17.00 for a truck load, the tenant's submission does not factor in labour and fuel costs to load and transport the garbage, which I find to be unreasonable. Had the tenant left the property without garbage, the landlord would not have incurred time or expense to have the garbage hauled away. Therefore, I hold the tenant responsible for the \$75.00 to have his garbage removed and I award this amount to the landlord.

### ***Damaged door***

It is undisputed that the tenant is responsible for the damaged door. The issue to determine is the value of the loss. Both parties provided documentary evidence indicating a replacement door is \$102.00 plus tax and considering the house is relatively new, I award the landlord the full cost of the replacement door plus tax.

The landlord also requested a further \$200.00 to remove and install hardware on the door, as well as paint and hang the new door. I accept that this claim represents the landlord's time to perform these tasks and I find that the landlord is entitled to compensation for his time spent performing repairs to items damaged by the tenant. I find the tenant's submission that these tasks are of no cost to the landlord and not recoverable to be unreasonable. Had the tenant repaired the door before the tenancy ended, as required of him under the Act, the landlord would not have had to spend his own time to make these repairs. Therefore, I grant the landlord's request for \$200.00 for his time to make this repair.

### ***Shrubs and lawn mower***

The tenancy agreement provided that the tenant was to "look after yard". In order for a term to be enforceable it must be sufficiently clear as to communicate the obligations under the term. Further, a term must not violate the requirements of the Act. I find this term insufficiently clear to find that the tenant was responsible for ensuring the shrubs did not die. I also find equipment maintenance is ordinarily a responsibility of a landlord

and not a tenant. Even if the term was enforceable, the landlord did not provide evidence to support the amounts claimed. Therefore, these claims are dismissed.

***Filing fee, Security deposit, and Monetary Order***

In summary, I have awarded the landlord the amounts he claimed for cleaning, garbage removal and the damaged door in the total amount of \$934.00 plus the \$50.00 filing fee. I authorize the landlord to retain the tenant's \$400.00 security deposit in partial satisfaction of these awards and I provide the landlord with a Monetary Order for the balance of \$584.00 to serve upon the tenant. The Monetary Order may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

**Conclusion**

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$584.00 to serve upon the tenant and enforce as necessary.

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: September 21, 2011.

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Residential Tenancy Branch