



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

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

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

At the outset of the hearing the landlord testified the matter of the security deposit had been dealt with at a previous hearing. As such, I have amended this Application to exclude the matter of retention of the security deposit.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid utilities; for compensation for damage to the rental unit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agreed the tenancy began on September 15, 2010 as a 1 year fixed term tenancy with monthly rent of \$1,400.00 due on the 1<sup>st</sup> of each month with a security deposit of \$700.00 paid. A copy of the tenancy agreement was not provided. The tenancy ended on August 31, 2011, resulting from the landlord's issuance of a 1 Month Notice to End Tenancy for Cause.

The landlord submitted that she had provided the tenants with a letter (submitted into evidence by the tenants) on August 19, 2011 offering two possible dates for a final condition inspection: August 31, 2011 at 1:00 p.m. or September 3, 2011 at 1 p.m. The letter requested the tenants provide confirmation of their preferred appointment in writing. The landlord testified she never received a response from the tenants.

The landlord testified that because she had not heard from the tenants as to their preferred appointment on August 31, 2011 her agent attended the rental unit around noon and was there until 3:30. During this time the locksmith the landlord had arranged for attended and changed the locks on the rental unit. The landlord testified that the agent left and returned around 7:00 p.m.

The landlord testified that the photographic evidence she submitted showing the condition of the rental unit and the Condition Inspection Report were completed by her agent who attended the rental in the afternoon and that when the agent returned it was clear to the agent the tenant's had returned to the unit and completed some additional cleaning.

The tenant testified that she was not aware they had to be out by 1:00 p.m. and they did return to the rental unit to complete the cleaning. When they did return, the tenant testified that she did not use her key and the door was unlocked. The tenant testified they cleaned the unit all bagged garbage was placed in the carport.

The tenant submitted written statements signed by friends who state they helped with the cleanup of the rental unit. Each of them state that they were in the unit bagging garbage until about 2:00 p.m. and that when they returned to the rental unit around 6:00 p.m. to clean floors and remove garbage the locks had been changed.

The landlord testified that the tenancy agreement required the tenants to care for the yard including maintaining a koi pond that had several koi and water plants at the start of the tenancy. In addition the landlord states that a garden hose and hasp from a shed is missing. The tenant testified that they had left some tires behind because she was not physically able to move them and the landlord has now removed them.

The landlord submits the tenant failed to pay a local utility bill that includes a late payment penalty. The invoice submitted by the landlord shows that amount owing to be \$113.38 but that the invoice is for service until July 21, 2011. The landlord testified that she confirmed with the utility the amount outstanding at the end of the tenancy was \$160.88. The tenant testified that she did not dispute this debt or amount.

The landlord seeks compensation for clean up and waste disposal; locksmith charges; pond liner replacement; utilities; floor replacement and missing yard items, in the amounts in the following table:

Description	Amount
Clean Up and Waste Disposal	\$1019.03
Locksmith	\$69.55
Pond Liner Replacement	\$150.00
Utilities	\$172.50
Replacement flooring (50% of total cost)	\$2,000.00
Yard items missing	\$100.00
<b>Total</b>	<b>\$3,511.08</b>

### Analysis

I accept the tenant's acknowledgement that the utility charges are their responsibility and find the landlord is entitled to the amount of \$160.88 agreed upon in the hearing.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That 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. Steps taken, if any, to mitigate the damage or loss.

While I accept, based on both party's testimony, that the tenants did not return the keys to the rental unit at 1:00 p.m. on August 31, 2011, I note that the landlord and/or her agent were able to gain access to the rental unit and as such there was no requirement to change the locks.

Further, I accept the tenant's position, based on the landlord's testimony that she had the locksmith booked for 2:30 p.m. that the landlord intended to change the locks whether or not the tenants returned the keys. I dismiss this portion of the landlord's Application.

The Condition Inspection Report provided by the landlord has absolutely no comments; check marks or condition codes used to describe the condition of the rental unit at the start of the tenancy. While there are comments made in that column the landlord testified that those comments were put in the wrong column and should have been written in the end of tenancy column.

While I note the Condition Inspection Report for the move in is signed by the tenants accepting the report as a fair representation of the condition of the rental unit at the start of the tenancy, I find that for the purposes of adjudicating the landlord's claim for damage to the rental unit I cannot rely upon the Report as an accurate reflection of the condition at the start of the tenancy, because there is nothing recorded.

While the landlord asserts several of the photographs submitted into evidence were taken at the start of the tenancy in lieu of completing the condition inspection report, I find there is nothing in the photographs themselves indicating the date they were taken and there is no reference to the photographs in the Condition Inspection Report. As such, I find the landlord has failed to establish the condition of the rental unit at the start of the tenancy.

As such, in relation to the landlord's claim for flooring replacement, I find the landlord has failed to establish that she has suffered a loss or damage and further she has failed to establish that if there is damage to the flooring it has resulted from a violation of the *Act*, regulation or tenancy agreement. I dismiss this portion of the landlord's Application.

Further the landlord has provided no documentary evidence confirming that the items she is claiming are missing were ever provided to the tenants at the start of the tenancy, as such I find the landlord has failed to establish any loss and I dismiss this portion of the landlord's Application.

While the landlord asserts the tenancy agreement required the tenants to care for the koi pond neither party provided a copy of the agreement or any instructions the tenants were provided by the landlord to care for the fish and/or the pond itself. As such, I find the landlord has failed to establish that she has suffered a loss resulting from a violation of the tenancy agreement and I dismiss this portion of her Application.

I find the testimony and written submissions provided by both parties with regards to the times the landlord's agent was at the rental unit and the tenants were there on August 31, 2011 seems to be contradictory (i.e. agent there from noon to 3:30 p.m. and the tenants there until 2:00 p.m.). In the absence of any of the witnesses or the agent himself at the hearing to provide direct testimony to clarify these discrepancies, I find I must rely only on the obligations of both parties under the Act.

Section 37 of the Act requires a tenant who is vacating a rental unit to do so no later than 1:00 p.m. on the effective end date of the tenancy and to leave the unit at that time reasonable clean (including the removal of all personal items like tires) and undamaged. As such, unless otherwise agreed upon by the parties and regardless of if and/or when a move out condition inspection was scheduled tenants are required to have all the work completed by 1:00 p.m. on that date.

As such and based on the condition recorded in the Condition Inspection Report I accept the tenants failed to comply with Section 37 resulting in the landlord suffering a loss for cleaning and removal of items in the amounts supported by the receipts submitted by the landlord as outlined in the table below:

Description	Amount
Clean up - 18 hours @ \$30/ hr	\$540.00
Recycling	\$50.00
Landfill charges	\$94.10
Gas for fuel to remove items	\$10.00
Truck Rental	\$179.00
Cleaning Supplies	\$19.07
<b>Total</b>	<b>\$892.17</b>

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,078.05** comprised of \$892.17 for cleaning

and removal; \$160.88 for utilities and \$25.00 of the \$50.00 fee paid by the landlord for this application as the landlord was only partially successful.

This order must be served on the tenants. If the tenants fail 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: November 24, 2011.

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Residential Tenancy Branch