



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MNR, MNSD, MNDC, OLC, RP, RPP, FF**

### Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting compensation for unpaid rent, damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied requesting compensation for damage or loss under the Act, an order the landlord comply with the Act, that the landlord make repairs to the rental unit and return the tenant's property.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process.

The tenant submitted a CD of photographs and copies of receipts which were viewed by the landlord; I was able to view the content of the CD after the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The landlord claimed unpaid November, 2011, rent and loss of December, 2011, rent revenue in the sum of \$6,000.00. The landlord confirmed that November rent has been paid; therefore, that portion of the landlord's claim was set aside.

The landlord claimed loss of rent revenue for a period of time that has yet to pass. Therefore, the claim for loss of December, rent revenue was premature and I declined that portion of the application. The landlord is at liberty to reapply.

The tenant stated she is vacating the rental unit on November 30, 2011; and agreed that an Order for repairs is not required.

The tenant stated she did not receive the landlord's evidence package. The landlord stated that the evidence was sent to the tenant via registered mail; a copy of the tracking information was submitted as evidence. The mail was sent on November 10, 2011; available for pick-up by the tenant on November, 15, 2011, with a Notice card left on that date. I determined that the tenant had been deemed served with the evidence package, as provided by section 89 of the Act. The documents and several photographs were explained and reviewed with the tenant as the hearing progressed.

There was no evidence before me or submission made in relation to property that must be Ordered returned to the tenant.

Each party applied in relation to the deposit paid. As the tenancy has not yet ended and it was agreed that rent has been paid in full to date, I explained that the deposit would continue to be held in trust until it is disbursed at the end of the tenancy, as required by the Act.

#### Issue(s) to be Decided

Is the tenant entitled to compensation for damage or loss under the Act?

Is the tenant entitled to filing fee costs?

#### Background and Evidence

A copy of the written tenancy agreement supplied as evidence indicated that this 1 year fixed-term tenancy commenced on July 1, 2011; rent is \$3,000.00 per month due on the first day of each month. A deposit in the sum of \$1,500.00 was paid.

The tenant has made the following claim:

Loss of use of home – 11 days	968.30
Sunglass damage	75.00
Re-upholstery costs – deck furniture	900.00
Perennial replacement costs	100.00
Cost to repair water-damaged window sills	250.00
Cleaning costs	150.00
Cleaning costs	75.00
Removal of paint from window panes	225.00
Replace vehicle keys	564.58
<b>TOTAL</b>	<b>4,343.81</b>

The tenant withdrew a claim submitted for loss of her son's bike, in the value of \$600.00.

The tenant testified that on September 9, 2011, the landlord, without warning, informed her that she needed to come home from work to close her windows, as they were going to begin power washing the home in preparation for exterior painting. The tenant stated she was not told of the painting that was to occur; that the work took place over an 11 day period of time and as a result her property was damaged.

The tenant has claimed total loss of use of the home for 11 days; the paint fumes were strong, workers were at the home and she did not have full access to the front porch or back porch during this time. The tenant found the constant intrusions onto the property very unsettling.

The tenant submitted photographs of her bicycle which was sprayed with paint; she wishes to have the bike replaced. The paint cannot be removed and was damaged due to the negligence of the landlord, who failed to properly cover the bike and her other belongings.

The tenant's sunglasses were in the basket of the bike and were sprayed with paint; the tenant wants to be reimbursed for the cost of the glasses. A photograph of the sunglasses, showing signs of paint spray was supplied as evidence.

The tenant supplied copies of photographs of her upholstered patio furniture. One photograph showed a smudge of some sort on one of the cushions; the tenant submitted this was paint and that she will need to reupholster her furniture at a cost of \$900.00.

The tenant had, with the landlord's permission, painted the interior of the home; however, the landlord's painters covered the white interior window sills with yellow paint and did a poor job, only partially covering the surface. The tenant has claimed the cost to restore the sills.

The tenant supplied copies of perennial plants she had placed in the garden that were damaged by the landlord and his workers. The tenant asked the landlord to be careful around the plants, but they ignored her requests. The tenant has estimated the cost of replacing these plants.

The parties agreed that some cleaning was required to the interior of the home as a result of the painting; the landlord arranged to have a cleaning service enter on November 19, 2011. Late in the evening of November 18, 2011, the tenant delivered a note to the landlord indicating that circumstances had changed and that she did not wish to proceed with the damage repair scheduled for the next day. The landlord did not have time to cancel the service and was charged a fee.

During the period of time painting was being completed the landlord informed the tenant they would enter the property to finish some repairs. The tenant was not given 24 hours notice and asked the landlord not to enter her property. Her son called and informed

the tenant that someone was on the property. The tenant went home, was upset and lost the keys to her vehicle. The tenant later discovered that some of the photographs of yard damage she had taken as evidence showed her keys lying on the ground near equipment. The tenant is convinced that the landlord or one of his workers took the keys. The tenant has claimed replacement costs for the keys.

The landlord testified that the tenant had use of her home during the time the exterior of the house was painted and that it took only 5 days to complete the work. The landlord stated the tenant never complained during this time, other than to comment that she did not like the colour he had chosen, and that she in fact brought him and the workers drinks. The landlord submitted the tenant eventually became difficult as she had obtained a dog, in breach of her tenancy agreement and the landlord had given her notice she was in breach.

The tenant's bike was sprayed with paint; the photographs show evidence of spray and the landlord confirmed this occurred. The photographs showed plastic that had been placed over the tenant's belongings; the landlord submitted the tenant or her daughter had used the bike and left it uncovered, resulting in the spray to the bike. The landlord did not dispute that paint spray may then have drifted to the area where the bike, sunglasses and helmet had been left. The landlord submitted that the paint could be removed, as it was latex. The landlord had given the tenant some acetone, for paint removal. The photos showed several small areas that had been cleaned with acetone; the tenant submitted this was not a sufficient method of paint removal.

The landlord denied that \$900.00 damage was made to the patio furniture. The photograph submitted by the landlord showed the furniture as damage-free. The landlord stated the tenant did not pay \$900.00 for the furniture and that the claim is excessive.

The landlord stated he and his workers did not find the tenant's vehicle keys and do have them.

The landlord stated that the plants were damaged by the tenant's dog; that the dog digs in the yard and this resulted in the damaged plants.

### Analysis

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### Test For Damage and Loss Claims:

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the tenant did everything possible to address the situation and to mitigate the damage or losses that were incurred

There was no evidence before me to substantiate the tenant's claim for complete loss of her home for a period of 11 days. The tenant may have suffered a temporary inconvenience while the landlord carried out necessary maintenance to the home, by painting the exterior, however; a temporary loss of use of the front porch and then the back entry do not support a claim for loss; I find this portion of the claim is dismissed.

There is no doubt that the bike, sunglasses and helmet were sprayed with paint. There was also evidence of one spot of what appears to be paint on one of the tenant's patio furniture cushions. The tenant has the burden of proving that the landlord's negligence caused damage to her belongings.

While the bike and sunglasses did experience some paint damage, I find that the tenant has failed to prove that the damage was due to the negligence of the landlord. The photographs showed that the items had been covered with plastic; which leads me to accept the landlord's submission that the bike was moved from under the plastic, resulting in spray. There is no evidence before me that the damage occurred on the first day of painting; after that time I find the tenant had some responsibility to ensure her belongings were protected. There was no submission that the tenant complained to the landlord during the time the house was painted, or that she expressed any concern in the relation to the painting. Further, even if the landlord had been negligent I would not find that the bike was now of no value. Therefore, the claim for bike replacement is dismissed. There was no verification of the amount claimed for the sunglasses.

The landlord's photographs of the patio furniture did not reveal any paint; however the cushion that had the one smudge could have been turned over. There was no evidence before me as to who might have caused a smudge of paint to transfer to the patio furniture; therefore, in the absence of evidence that this was caused as the result of negligence on the part of the landlord, I dismiss the claim for reupholstering. Further, no verification of the cost of reupholstering was submitted as evidence.

In relation to the perennial damage; there is no evidence before me that the landlord caused this damage or whether it was due to the tenant's dog. Even if the landlord had caused the damage, there was no evidence that the perennials were killed. Further,

there was no verification of the cost of the perennials. Therefore, this portion of the claim is dismissed.

In relation to the removal of paint from window panes and the costs to repair damage; these are all items that are the sole responsibility of the landlord. The landlord has the right to paint and the tenant may not assume those responsibilities. The tenant had been allowed to paint the interior of the home and was upset by the paint that was applied inside the windows, but no loss has been proven, other than perhaps aesthetic. Therefore, I find that this portion of the claim is dismissed.

The tenant and landlord had reached agreement in relation to cleaning and then the tenant cancelled the offer at the last minute. Therefore, I dismiss the claim for cleaning costs as the tenant refused the offer of the landlord to have the cleaning completed.

The loss of the tenant's vehicle keys cannot be considered the fault of the landlord. The tenant supplied no evidence that the landlord or one of his workers stole her keys. The tenant has assumed that the only possible reason the keys were missing was due to the landlord's actions; there was no proof of this. Therefore, this portion of the claim is dismissed.

Therefore, the tenant's claim has been dismissed.

### Conclusion

The tenant's claim is dismissed.

The claim in relation to the deposit was premature.

The landlord's claim for loss of rent revenue was declined as a loss has yet to occur. The landlord is at liberty 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: November 27, 2011.

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Residential Tenancy Branch