



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, 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 tenant.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for damage or loss; 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 landlord submitted a copy of a tenancy agreement signed by the parties on September 15, 2010 for a 1 year fixed term tenancy beginning on October 1, 2010 for a monthly rent of \$750.00 due on the 1<sup>st</sup> of each month with a security deposit of \$362.00 paid. The parties agree the tenancy ended on September 30, 2011.

The tenancy agreement included an addendum that listed among other things that should the tenant have an additional adult occupant then the rent would be increased by \$100.00. The parties agreed the tenant provided the landlord with her forwarding address on October 28, 2011. I note the landlord submitted his Application for Dispute Resolution on November 2, 2011, within the 15 days required under Section 38(1) of the *Act*.

The landlord testified that he did not complete a move in Condition Inspection Report but did complete a walk through with the tenant at the start of the tenancy. The landlord

confirmed he also did not complete a Condition Inspection Report for the move out but that he took pictures after a walk through with the tenant.

The landlord seeks compensation for the following:

Description	Amount
3 months of having an additional occupant	\$300.00
Carpet patching due to cat damage	\$300.00
Painting due to damaged walls	\$300.00
Gas Detector removed by tenant	\$250.00
Movies rented from cable provider	\$35.00
HST	142.20
Postage	9.73
<b>Total</b>	<b>1336.93</b>

The landlord testified the tenant had an additional male occupant living with her for sometime he is not sure how long but thinks it was at least 2 months. He states that between his wife and himself he saw the occupant always there. The tenant acknowledges that she did have a male staying with her while she was recovering from three surgeries but testified he was not living there.

The parties agreed the tenant had cats and that landlord asserts that the cats tore the carpet requiring repairs. The tenant testified that the tears were pre-existing at the start of the tenancy.

The parties agree that towards the end of the tenancy the tenant changed the locks on the rental unit and did not give the landlord a key. The landlord testified that as a result the rental unit suffered water damage when a flood upstairs occurred. In addition the landlord asserts the tenant caused damage to the rental unit walls when moving. The tenant contends that both the ceiling damage (flooding) and the wall damage all existed prior to the start of her tenancy.

The parties agree the tenant is in possession of the gas detector and that the tenant owes the landlord \$35.00 for movies that she had rented.

### Analysis

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.

From the tenant's testimony where she disputes the landlord's claim for additional rent based on an additional occupant, in the absence of any corroborating evidence or testimony, I find the landlord has failed to establish that the tenant had an additional occupant, for any period of time that would be sufficient to invoke the relevant clause in the tenancy agreement.

In relation to the landlord's claim for damage to the rental unit, specifically the carpets, walls and ceiling, I find the landlord has established there is damage to the rental unit. However, as the landlord has provided no evidence to establish the condition of the rental unit at the start of the tenancy, I find the landlord has failed to establish that the damage resulted from a violation of the *Act*, regulation or tenancy agreement.

I accept from the testimony of both parties that the tenant owes the landlord \$35.00 for movies rented and that the tenant has the landlord's Gas Detector. I order the tenant to return the landlord's gas detector within 2 weeks of receipt of this decision. Should the tenant fail to do so, I grant the landlord liberty to file a new Application for Dispute Resolution to seek compensation.

As to the landlord's claim for HST, first HST is not a separate component of damages, the landlord's claim should have had the HST include for each of the items, such as painting, carpet replacement, etc. In addition the landlord has calculated HST on the additional rent he was seeking; HST cannot be charge on rent. And finally, I have dismissed the landlord's claims for the all of the damages that he calculated the HST on.

Because the use of postage is related to the service of documents for this hearing and because the *Act* allows many methods of service, the choice using registered mail is one made by the applicant and therefore not recoverable from the tenant.

For the reasons above, with the exception of the agreed upon movie charges, I dismiss balance of the landlord's Application.

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$327.00** comprised of \$362.00 security deposit less the \$35.00 for movies.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant 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: January 20, 2012.

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Residential Tenancy Branch