



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDC, FF

### Introduction

This hearing dealt with the landlord's amended application for a Monetary Order for damage to the rental unit; unpaid rent; and damage or loss under the Act, regulations or tenancy agreement. 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.

### 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 recover unpaid rent from the tenant?
3. Has the landlord established an entitlement to compensation for other damages or loss under the Act, regulations or tenancy agreement?

### Background and Evidence

The tenancy commenced August 1, 2009 for a one-year fixed term and then converted to a month-to-month status. The tenant was required to pay rent of \$1,341.60 on the 1<sup>st</sup> day of every month. The tenant had paid a \$650.00 security deposit; however, the landlord has been authorized to retain the security deposit pursuant to a previous dispute resolution decision (file no. 245492). The landlord has also previously been granted a Monetary Order for unpaid rent for the months of June 2011 through August 2011.

With this amended application the landlord is seeking to recover the following amounts from the tenant:

Rent: September and October 2011	\$ 2,683.20
Filing fee paid for this application	50.00
Cost of taking inventory of the tenant's possessions, removal of tenant's possessions, and some cleaning on September 2, 2011	100.00
Locksmith costs	105.00
Cost of cleaning, moving tenant's possessions, and garbage removal on September 8, 2011	140.00
Carpet cleaning	181.00
Replacement of missing kitchen faucet	22.34
Landlord's loss of wages to serve documents; attend property; supervise inventory, etc.	1,260.00
Cleaning by landlord (6 hours @ \$25.00/hr)	<u>150.00</u>
TOTAL	\$ 4,691.54

The parties were in dispute with respect to several aspect of the landlord's application. Below I have segregated the issues and provided the parties respective positions.

***Abandonment of rental unit and possessions***

Landlord:

- The landlord was provided an Order of Possession on August 10, 2011 which was served upon the tenant.
- In accordance with serve requirements of the Order of Possession the landlord determined the tenant had until August 20, 2011 to vacate the rental unit and communicated such to the tenant.
- On August 20, 2011 the landlord attended the property, found the door unlocked and entered the unit. The landlord observed that the tenant's bed and her children's' bed were gone along with several other belongings.
- The landlord gave the tenant two more Notices of Entry and entered the unit again on August 24, 2011 and August 29, 2011 during which time the unit looked to be in the same condition as on August 20, 2011. The landlord posted another Notice of Entry for September 2, 2011.
- Upon entering on September 2, 2011 the landlord determined the rental unit appeared abandoned. The abandoned possessions included used clothes, a chest of drawers, and old TV, plastic containers, a non-working video game drum, an old child's bike, and children's helmets. The landlord also hired a person to take an inventory of the tenant's possessions, start cleaning the unit and move the abandoned possessions to the landlord's property for storage.

The landlord determined the lock was broken and had a locksmith change the lock.

- More cleaning and moving of the abandoned possessions took place on September 8, 2011.
- The landlord was unable to contact the tenant and the tenant did not contact the landlord until November 7, 2011.
- On November 7, 2011 the landlord served the tenant with this application in person and during that time the tenant enquired about her possessions. The landlord told the tenant she had her possessions at her property.
- Upon no further contact from the tenant the landlord had the tenant's possessions taken to a used goods store for valuation on November 16 or 17, 2011. The store valued the items to be between \$75.00 and \$100.00. The landlord had the useable possessions donated and took the rest to the dump, with the exception of a couple electronic items that the landlord continues to hold for the tenant to pick up.

**Tenant:**

- The tenant had received the Order of Possession and the landlord's letter advising her she had until August 20, 2011 to vacate the rental unit.
- On August 20, 2011 the tenant removed her bed and her children's beds, her children's' clothes and dressers from the rental unit.
- From August 20, 2011 onwards the tenant and her children started staying with friends and family.
- The tenant continued to return to the rental unit to retrieve other belongings and that is why the door was left unlocked.
- On September 3, 2011 the tenant attended the property for purposes of removing the remainder of her belongings and cleaning the unit but the locks had already been changed and she could not gain entry.
- The landlord failed to take photographs of the items stored outside of the rental unit.
- The tenant valued the possessions left behind at the rental unit to be more than \$500.00.
- The tenant tried calling the landlord once and when the answering machine came on the tenant chose not to leave a message.

***Unpaid or loss of rent***

The landlord submitted that the tenant was given ample opportunities to vacate the rental unit and the tenant's failure to remove her possessions caused the landlord to lose rent for September 2011. In addition, the odour in the rental unit and the badly

stained carpet (possibly from vomit) resulted in a loss of rent for October 2011. The landlord noted that although the carpeting was nearly 12 years old, prior to this tenancy it was in good condition and there had not been previous problems renting the unit. The carpets were replaced and the unit was re-rented for November 1, 2011.

The tenant denied that vomit was on the wall or carpet as suggested by the landlord. Any deterioration to the carpet was normal wear and tear. The unit was in a basement and smelled as such.

***Inventory, moving of tenant's possessions, cleaning***

The landlord paid a person \$100.00 to take an inventory list of the tenant's possessions that remained in the rental unit, move the possessions, and start cleaning on September 2, 2011. This person was paid a further \$140.00 for seven hours of cleaning at the rate of \$20.00 per hour on September 8, 2011. The landlord also estimated that she also spent six hours cleaning the rental unit at an hourly rate of \$25.00 for a further claim of \$150.00.

The tenant submitted that her possessions were not abandoned and she was going to retrieve the remainder of her possessions and clean the unit on September 3, 2011 but the landlord had already changed the locks and the tenant could not gain entry.

***Locksmith***

The landlord ordinarily re-keys locks when necessary but in this case the lock was broken during the tenancy. The landlord paid \$105.00 to a locksmith for a new lock and keys.

The tenant submitted the lock was not damaged. Rather, the door was unlocked at the end of the tenancy because the tenant was coming and going from the rental unit.

***Carpet cleaning***

The landlord hired carpet cleaners for \$181.00 in an attempt to remove the stains and odour from the carpeting. The cleaning was unsuccessful and the landlord had to ultimately replace the carpeting. The landlord is not claiming for the cost of new carpets as the carpeting was 12 years old.

The tenant submitted she was going to clean the unit on September 3, 2011.

***Missing kitchen faucet***

One of the kitchen faucets was missing. The landlord had to replace both at a cost of \$22.34. The house was constructed in 2000.

The tenant acknowledged dropping a coffee mug on the faucet and it broke. s evidence for this proceeding, the landlord provided copies of: the previous dispute resolution decision and Orders; written communications from the landlord to the tenant in August 2011; Notices of Entry issued by the landlord in August 2011; photographs of the rental unit taken September 2, 2011; the inventory of the tenant's possessions taken September 2, 2011; various invoices and receipts for costs incurred to clean and repair the rental unit at the end of the tenancy.

### Analysis

Upon review of all of the evidence before me I provide the following findings and reasons with respect to the application before me.

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.

### ***Loss of Rent***

The tenancy ended because the tenant violated the tenancy agreement and the Act by failing to pay rent when due. The tenant further violated the Act by not vacating the rental unit on the effective date of the Notice to End Tenancy for Unpaid Rent thus requiring the landlord to obtain an Order of Possession which was granted on August 10, 2011. It was undisputed that the tenant was served with the Order of Possession and that it was enforceable after August 20, 2011. I am satisfied the landlord made reasonable attempts to re-rent the unit as evidence by the undisputed showing of the unit on August 24, 2011 but at that time the rental unit had not been completely vacated or cleaned by the tenant. Therefore, I hold the tenant responsible for the landlord's loss of rent for September 2011.

I find the reason for the vacancy in October 2011 is less clear. The landlord had the unit cleaned starting September 2, 2011 and then completed September 8, 2011 with the exception of the carpets. Nor did I hear of significant damage to the unit, except for

the condition of the carpets. I heard the landlord had the carpets cleaned twice; however, the carpet cleaning receipt indicates only one date: September 17, 2011. It is unclear from the landlord's submissions when the second cleaning took place and when the carpets were replaced. It is also unclear from the evidence before me whether the landlord continued to advertise and show the rental unit to prospective tenants during September 2011.

Due to the above uncertainties, and because the landlord replaced the 12 year old carpet during the vacancy, which was at the end of its economic life, I find there is insufficient evidence to show that the tenant's actions are the reason the rental unit was vacant in October 2011. Therefore, I deny the claim for loss of rent for October 2011.

***Cleaning, carpet cleaning, and removal of tenant's possessions***

When a tenant abandons a rental unit the landlord automatically regains possession of the rental unit and an Order of Possession no longer needs to be enforced through the court. However, any abandoned furniture or possessions must be dealt with by the landlord in a manner that complies with the Residential Tenancy Regulations.

In this case, I was provided disputed evidence as to whether the tenant had abandoned the rental unit by September 2, 2011. Section 24 of the Regulations provides criteria for determining whether a tenant has abandoned property at the rental unit. Upon consideration of section 24 of the Regulations and the circumstances of this case, I find, based on the balance of probabilities, that the tenant had abandoned the remainder of her possessions at the rental unit. I make this determination based upon the following factors:

1. The landlord had communicated to the tenant in writing that the bailiff would be called to enforce the Order of Possession if the tenant remained in the unit after August 20, 2011.
2. The landlord had given or posted multiple Notices of Entry informing the tenant when the landlord would be entering the unit: August 20, 2011; August 24, 2011; August 29, 2011 and September 2, 2011 and the tenant was not at the rental unit. Nor did the tenant communicate with the landlord between August 20, 2011 and September 2, 2011.
3. The tenant testified that she was staying with friends and family starting August 20, 2011.
4. The tenant had removed her children's beds, bedding and clothing from the rental unit by August 20, 2011.
5. The tenant no longer had a bed at the rental unit after August 20, 2011.

6. The landlord's photograph of the fridge showed a small amount of milk and a head of lettuce as the only food in the fridge as of September 2, 2011.
7. The landlord's inventory of items found in the rental unit did not include any food items.

Since I am satisfied the landlord had sufficient basis to conclude the tenant had abandoned the rental unit as of September 2, 2011 I am satisfied the landlord acted reasonably by removing the tenant's abandoned property and commencing cleaning efforts to mitigate further loss. I find the landlord's claim for \$100.00 to deal with the tenant's abandoned property to be reasonable and I grant that amount to the landlord.

Based upon the landlord's photographs and the cleaner's invoice I find the landlord has substantiated her position that the tenant did not leave the rental unit reasonable clean as she was required to do under the Act. I grant the landlord's claim of \$140.00 paid to a cleaner on September 8, 2011 and I award the landlord six hours at \$20.00 per hour for her time spent cleaning. I find the landlord did not establish sufficient basis to charge the tenant \$25.00 per hour for cleaning when the landlord established that she could pay a cleaner \$20.00 per hour. Therefore, the landlord's total award for cleaning is \$260.00.

Given the tenancy was greater than one year and based upon the photographs of the rental unit, and the carpet cleaning invoice, I further award the landlord carpet cleaning costs of \$181.00.

I find the landlord's claim for her own lost wages to be not compensatory under the Act and I deny her claim for \$1,260.00 against the tenant. I consider the landlord's decision to supervise the person she hired to remove the tenant's possession to be her own business decision for which the tenant is not responsible for. Further, I consider the landlord's actions of regaining possession of the unit, inspecting the unit, showing the unit to prospective tenants, and serving documents upon a tenant, to be business activities that a landlord must expect to occur from time to time. In other words, the landlord's time for performing landlord duties is a cost of doing business as a landlord.

### ***Locksmith***

Having been satisfied the tenant had abandoned the rental unit and did not return the keys to the landlord and had left the rental unit unlocked, I accept on the balance of probabilities that the landlord had to have the locks changed because the tenant is responsible for damaging the lock.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37.

Since building locks have a normal useful life of 20 years and I heard the house was built in 2000 I award the landlord a prorated award of  $\$105.00 \times 9/20 \text{ years} = \$47.25$ .

### ***Faucet***

The tenant acknowledged dropping a coffee mug on the faucet and I consider the broken or missing faucet to be damage for which the tenant is responsible. Faucets have a normal useful life of 15 years and having heard the house was built in 2000 I award the landlord a prorated amount of  $\$22.39 \times 4/15 \text{ years} = \$5.97$ .

### ***Filing fee***

The landlord is awarded one-half of the filing fee paid for this application to reflect the relative success of the landlord in this application.

### ***Monetary Order***

The landlord has been provided a Monetary Order to serve upon the tenant, and enforce in Provincial Court, calculated as follows:

Loss of rent: September 2011	\$ 1,341.60
Removal of tenant's possessions	100.00
Cleaning	260.00
Carpet cleaning	181.00
Locksmith	47.25
Replacement of missing kitchen faucet	5.97
Filing fee	<u>25.00</u>
TOTAL	\$ 1,960.82

### **Conclusion**

The landlord has been awarded \$1,960.82 and has been provided a Monetary Order in that amount 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: February 3, 2012.

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Residential Tenancy Branch