



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property; to keep all or part of the security and/or pet deposit, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation and /or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to section 67 of the *Residential Tenancy Act*?

### Background and Evidence

The Landlord affirmed he did not receive the Tenant's photographic evidence until February 28<sup>th</sup>, 2012, when he found the envelope in his mail box.

The Tenant confirmed he had delivered his evidence to the Landlord on Monday February 27, 2012, and he faxed the photo's to the *Residential Tenancy Branch* that same day. The original photographs were to be house mailed to the *Residential Tenancy Branch* from the Government Agent's office. I explained that the evidence had not received the file in time for the hearing, and because the evidence was submitted late that I would not be considering it in my decision, as per the *Residential Tenancy*

*Branch Rules of Procedure # 11.5.* The parties were advised that I would accept the Tenant's verbal testimony relating to his evidence.

The parties agreed they had entered into a written one year lease that began in approximately July 2009 and ended December 14, 2011 when the Tenant vacated the property. Rent was payable on the first of each month in the amount of \$650.00 and on or before July 2009 the Tenant paid \$325.00 as the security deposit. No condition inspection report forms were completed at the beginning or at the end of the tenancy. The Tenant did not provide the Landlord with his forwarding address in writing. The rental unit was a fully furnished self contained suite located in the Landlord's residence.

The parties further agreed that the Tenant only paid \$600.00 towards December 14, 2011 rent; that on or before December 1, 2011, the Tenant provided the Landlord notice to end his tenancy; and that the parties agreed the Landlord would return half of the December 2011 rent paid (\$300.00) to the Tenant if the Landlord was able to find a replacement tenant for mid December.

The Landlord affirmed that the replacement tenant occupied the unit as of December 16, 2011, and he has not yet returned the \$300.00 rent to the Tenant as agreed because he knew his expenses would exceed the deposit.

Upon review of the Landlord's claim the Tenant stated he accepted responsibility to pay for the replacement dryer door at the cost being claimed of \$290.02. The Tenant confirmed he was disputing the rest of the Landlord's claim.

The Landlord advised the remainder of his claim is as follows:

- A) \$24.64 for the replacement glass of a picture or print that was hanging on the wall, as per the invoice provided in his evidence. The Landlord states he found the print inside a closet with the glass broken.
- B) \$433.15 to replace the Landlord's missing television as per the invoice provided in his evidence. The Landlord was not able to provide the exact age of the television however he did confirm it was an older tube type television that may have been maybe five years old. When he regained possession of the unit he found a different television inside the suite that was not working.
- C) \$50.00 for carpet cleaning the stairs, living room, dining room, and bedroom which he stated was approximately 500 square feet. The Landlord advised he used to own his own cleaning company so he owns an industrial carpet cleaner

and all the solutions to clean the carpet. No evidence was provided in support of this claim.

- D) \$300.00 for twenty hours of cleaning at \$15.00 per hour. The Landlord advised that he had three of his friends assist him in cleaning the unit from approximately 5:30 p.m. to after 1:00 a.m. He alleged the unit was covered in grease and that there was no cleaning done in the suite the entire time the Tenant lived there. No evidence was provided in support of this claim however the Landlord stated that he did pay his friends and the only evidence he had was his word. He does not recall seeing the Tenant's parents at the rental unit that day so he questions how they could have been cleaning the unit.

The Tenant's Witness affirmed that he was at the unit, with his wife and the Tenant cleaning it on December 14, 2011. He himself cleaned all the surfaces in the bathroom and the inside of the fridge. His son and wife worked on cleaning the rest of the unit and at the time they left the unit he felt they had cleaned it adequately. He questions the Landlord's time frame for cleaning as he saw the Landlord at a local restaurant that evening, around 10:00 p.m. at which point the Landlord told him he was awaiting the arrival of his friends to help him clean the unit. The Witness advised he did not mention they had spent the afternoon cleaning as he did not feel like getting into it at the restaurant.

The Tenant confirmed he was disputing the remaining items being claimed and he provided the following testimony in response to the Landlord's claim:

- A) The picture glass was broken at the onset of his tenancy so he took it off the wall and placed it inside the closet.
- B) He placed the television outside of his unit in the common area along with two chairs near the beginning of his tenancy. He knows the Landlord removed the two chairs from the common area and therefore he would have had to have seen the television. He did not want the television in his suite because it was very old and he had purchased himself a new television. He confirms he replaced the television with a used one and argues that it was in working condition at the end of the tenancy. He acknowledges that the Landlord's television would have been worth about \$100.00 and therefore he agrees to pay \$100.00 for the television but certainly not \$433.15 as being claimed.
- C) He believes carpet cleaning would be considered normal wear and tear. He confirms he did not clean the carpet and there may have been some minor stains but again he feels that would be the Landlord's responsibility.
- D) The Tenant stated that his parents and he cleaned the unit fully, all the hard surfaces and that they even pulled out the stove to clean behind it. He does not

agree with this claim and argued that the dryer vent may have caused the greasy film on the walls because it was not vented properly.

In closing the Landlord confirmed he was at the restaurant that evening, however it was only for a short supper break. He is certain he and his friends were at the unit from 5:30 p.m. until about 1:30 a.m. the next morning cleaning. He argued that clothes dryers do not create grease they create lint. He did not see the Tenant's mother at the unit that day.

The Tenant stated the Landlord was not even in town that day, he was in another city. Also, the Landlord told his father at the restaurant at 10:00 p.m. that he was awaiting his friends to arrive to help him clean therefore they could not have been at the unit cleaning from 5:30 p.m. onward.

### Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the Landlord 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 tenant.

The Tenant has accepted responsibility to pay the Landlord **\$390.02** which includes \$290.02 for the dryer door repair plus \$100.00 for the television. I have determined the remainder of the Landlord's claim as follows:

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 the normal useful life of items as provided in *Residential Tenancy Policy Guideline 37*.

Part 3 Section 21 of the *Regulation* stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the

inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case, neither party provided evidence in accordance with the *Residential Tenancy Branch Rules of Procedure* that could be used to prove the condition of the rental unit at the onset, or at the end of the tenancy.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove damages occurred during the course of the tenancy, that the Tenant failed to clean the unit at the end of the tenancy, and that the Landlord actually suffered a loss as a result. Accordingly, the only evidence before me was verbal testimony. Accordingly, I find the disputed verbal testimony insufficient to meet the Landlord's burden of proof. Furthermore, in the absence of the actual cost or loss suffered by the Landlord for carpet cleaning or general cleaning, I find there to be insufficient evidence to meet the burden of proof on all of the items being claimed, and I hereby dismiss the balance of the Landlord's claim.

The Landlord has only been partially successful with his claim; therefore I award partially recovery of the filing fee in the amount of **\$25.00**.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Dryer door repair	\$ 290.02
Television	100.00
Filing Fee	<u>25.00</u>
<b>SUBTOTAL</b>	<b>\$ 415.02</b>
<b>LESS:</b> Half of December 2011 Rent Paid	-300.00
<b>LESS:</b> Security Deposit \$325.00 + Interest 0.00	<u>-325.00</u>
<b>Offset amount due to the TENANT</b>	<b><u>\$ 209.98</u></b>

The Landlord is HEREBY ORDERED to return the balance due to the Tenant in the amount of **\$209.98**, forthwith.

Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$209.98**. This Order is legally binding and must be served upon the Landlord.

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: March 02, 2012.

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Residential Tenancy Branch