



# 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 an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit site or property, for unpaid rent or utilities, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing 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. Have the parties agreed to settle any of the items claimed for by the Landlord?
2. Has the Landlord met the burden of proof to obtain monetary compensation for all other items being claimed, pursuant to sections 7 and 67 of the *Residential Tenancy Act*?

### Background and Evidence

The parties agreed they entered into a fixed term tenancy agreement that began on January 20, 2010, which switched to a month to month tenancy after January 31, 2011, and ended December 31, 2011. Rent was payable on the first of each month in the amount of \$825.00 and on January 20, 2010 the Tenants paid \$412.50 as the security deposit. Both parties attended and signed the move-in condition report on January 12, 2010 and the move out condition report on December 31, 2011. The Tenants' forwarding address was provided on the move out condition report.

At the outset of the hearing the Tenants advised they did not receive a copy of the Landlord's written statement and did not receive a copy of his latest invoice for plumbing. They did however receive the other documents he submitted into evidence.

A discussion took place whereby the Tenants agreed to be responsible for the following:

\$51.44 for Hydro costs + \$19.72 for Water + \$128.80 for Carpet Cleaning.

The Landlord agreed to accept the above amounts to settle these items he had claimed.

The Landlord affirmed the rental unit was a basement suite in a house that was built in 1991 and which he has owned and rented from that time. He confirmed that the photos he provided in evidence were "not all taken at the same time" and therefore he could not provide testimony as to the exact date each of them were taken. He argued that the move out inspection was rushed so he did not notice some of the items he is claiming until he attended the unit weeks after the tenancy ended. He has not re-rented the unit and it remains vacant as of the time of this hearing. The remainder of his claim is as follows:

- 1) \$154.56 to repair the broken kitchen window. He states he attempted to repair the window however when the replacement window arrived it was too big so he is awaiting another one which is currently on order. The invoice he provided in evidence has not been paid nor has the window been replaced as of yet. This window is original from 1991 and was broken when the male Tenant was cutting the lawn and a rock was thrown from the lawnmower. The Tenants were required to maintain the lawn, as per their tenancy agreement, and therefore he feels they are responsible for the cost of the window repair.
- 2) \$75.00 for drywall repairs. This claim is to cover the Landlord's time in chipping off the paint, patching, sanding, and painting the drywall at the corners of the windows in the bathroom, bedroom, and kitchen. He is of the opinion this is caused by the Tenants' illegal actions but has no proof. He confirms he did not note these repairs on the move out inspection report and thought at the time he would absorb these costs but he has since changed his mind. He completed the work in January 2012. He states the unit was repaired and repainted just prior to the onset of this tenancy however he does not know the exact date and he did not submit evidence in support of this.
- 3) \$25.00 for the disposal of oil and garbage left by the Tenants. At move out the Tenants said these items were left by other tenants. He called the previous tenant and she said it was not hers. He does not have evidence that it cost him to dispose of these items he simply took them away to be disposed of.

- 4) \$45.00 to clean the fridge and stove. The Landlord claims the fridge became mouldy a few weeks after the tenancy ended from some meat drippings that were under the crisper which caused him to look under the stove and he found the mess as displayed in his photographs. He argued the Tenants told him they had moved the fridge and stove and cleaned behind so he did not check that during the move out.
- 5) \$45.00 to repair the bedroom door. He confirmed this was not noted on the move out inspection report and that he found it after the tenancy had ended. This claim is for his time to fill and repair the hole which was completed sometime at the end of January.
- 6) \$85.00 to unplug the kitchen sink drain. The Landlord confirmed the receipt provided in evidence is generated from his own company as he is a licensed plumber. He states he did not notice the plug initially and then after he noticed that the sink was not draining he decided to wait to repair it until the window installer came and could see that it was plugged. He cleared the drain at the end of February 2012 when he found wooden sticks and straws that were about 9 feet into the drain.

The Tenants deny being responsible for the items being claimed. They pointed to their own evidence which included photos of items they had moved to their new home and noted that most of the Landlord's photos must have been taken prior to the end of their tenancy and are probably from other people's tenancies. They noted how many things are not written on the move out inspection report and some, such as the drywall around the windows was the same at move in as they were at move out so that is why they are not noted on the inspection report.

- 1) \$154.56 to repair the broken kitchen window. The Tenants confirm the window broke during their tenancy from a rock thrown from the lawnmower. They argued it was an accident and therefore they should not have to pay for it. They referenced several quotes in their evidence which are lower than what the Landlord is attempting to claim. They questioned how he could get an invoice when the repair was not yet completed.
- 2) \$75.00 for drywall repairs. The drywall around the windows was the same cracked and bubbled paint at the end of the tenancy as it was at the beginning that is why it is not noted on the move out sheet.
- 3) \$25.00 for the disposal of oil and garbage left by the Tenants. They did not leave anything behind and this stuff was from other previous tenants. The bucket left in the garbage can had dirt in it so if it got rain in it then it could look like oil. This was not on the move out sheet.

- 4) \$45.00 to clean the fridge and stove. They were never asked if they moved the fridge or stove. They admit they moved the fridge but they did not move the stove and they certainly did not leave their fridge in the condition the Landlord shows in his photographs. These photos must be from other tenancies. They note that nothing is listed on the move out sheet.
- 5) \$45.00 to repair the bedroom door. Again this damage was present at the beginning of their tenancy as it was at the end. They took a picture when they first noticed it but were not able to print the picture with the date. It is not noted on the move out sheet.
- 6) \$85.00 to unplug the kitchen sink drain. This drain was definitely not plugged at the time they moved out and in fact they used this sink when they were cleaning the unit and had no problems. They note that when they went by to see if the window was repaired that the Landlord had a work bench set up so he could have caused the plug after they moved out, if it was in fact plugged.

In closing the Landlord questioned why the Tenants did not draw his attention to the hole in the door if they had seen it when they first moved in. He could not provide the exact date when he noticed the sink was plugged

The Tenants noted again that the Landlords photos a older and some prior to their tenancy and that they too spoke with the previous tenant who confirmed the items left behind were not hers but she also told them they were left behind by tenants who were there before her. They confirmed they did not point out the hole in the door when they first found it because it was existing damage that was small like around the windows so they thought it would not be an issue.

### Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, photographs submitted by the Tenants, the move-in and move out inspection report form, written statements from Tenants, receipts submitted by the Landlord in his first submission, and a copy of the tenancy agreement.

The Landlord affirmed that he did not provide the Tenants with copies of his plumbing invoice and the Tenants affirmed they did not receive a copy of the Landlord's written statement. Evidence not provided to the other party in advance of the hearing is a contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the respondent Tenants have not received copies of the Landlords' evidence as noted

above, I find that that evidence cannot be considered in my decision. I did however consider the Landlords' testimony and the other documents as listed above.

Furthermore, the Landlord has confirmed that the photos he provided in evidence were taken at different dates and he could not confirm which dates, therefore, in the presence of the Tenants arguments that these photos pertain to a different tenancy or from a previous tenant(s), I find these photos as being in dispute and are therefore insufficient to prove the condition of the unit at the end of the tenancy.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Part 3 Section 21 of the Regulations 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.

After careful consideration of the evidence before me and based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit with a broken window and by forgetting to clean under the stove. For the balance of the Landlord's claims, I find there to be insufficient evidence to prove the Landlord's claims resulted from losses directly related to this tenancy; therefore they are dismissed.

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*.

After careful consideration of the aforementioned and the documentary evidence I hereby find the Landlord has met the burden of proof to establish a monetary claim for the amounts as indicated below, pursuant to section 67 of the Act.

Window repair – the normal useful life of a window is 15 years. In this case the window was 21 years of age and has surpassed its useful life. *Residential Tenancy Policy Guideline #16* states that a Dispute Resolution Officer may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. In this case I find that the Tenants ought to have repaired the broken window and therefore the Landlord is entitled to nominal damages in the amount of **\$60.00**.

Clean beneath the stove. The evidence supports the floor needed to be swept, washed, and two pots removed from underneath the stove. The Tenants have admitted they forgot to clean under the stove area therefore I award the Landlord **\$10.00** to accommodate for his time to sweep and wash the area under the stove.

The parties previously agreed that the Landlord was entitled to **\$199.96** which is comprised of \$51.44 for Hydro costs + \$19.72 for Water + \$128.80 for Carpet Cleaning.

The Landlord has been partially successful with his claim; therefore I award partial 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:

Window repair	\$60.00
Cleaning under stove	10.00
Hydro, water, carpet cleaning	199.96
Filing Fee	<u>25.00</u>
<b>SUBTOTAL</b>	<b>\$ 294.96</b>
<b>LESS: Security Deposit \$412.50 + Interest 0.00</b>	<b><u>-412.50</u></b>
<b>Offset amount due to the TENANTS</b>	<b><u>(\$ 117.54)</u></b>

There is a credit balance after offsetting the amount due to the Landlord against the Tenants' security deposit. Therefore I hereby Order the Landlord to return the balance of the Tenants' security deposit in the amount of **\$117.54** forthwith.

Conclusion

The Tenants' decision will be accompanied by a monetary order in the amount of **\$117.54**. 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 16, 2012.

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Residential Tenancy Branch