



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNSD, O, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The first hearing was conducted via teleconference and was attended by one of the landlords and both tenants. A second hearing was reconvened via teleconference and was attended by one of the landlords and the female tenant.

During the hearing the tenants identified that they had not received all of the landlord's evidence. The landlord testified that she had served all of her evidence in the same packages sent to both parties on December 9, 2011.

As the tenant insists that she did not receive all of the documents, I adjourned the proceedings for the purpose of having the landlord serve all of her evidence again except for the photographs as the tenant confirmed that she had received the photographs.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for money owed or damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Act*.

### Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on March 26, 2007 for a 1 year and 1 day fixed term tenancy beginning on April 15, 2007 that converted to a month to month tenancy on April 16, 2008 for a monthly rent of \$1,250.00 due on the 1<sup>st</sup> of each month with a security deposit of \$625.00 and a pet damage deposit of \$625.00 paid.

The tenants submitted a copy of a rent increase notification confirming rent was increased to \$1,275.00 effective February 2011. The tenancy ended when the tenants vacated the rental unit on or before November 15, 2011.

Despite offers from the landlords the tenants did not attend a move inspection, however, the landlord completed the move out inspection, completed a Condition Inspection Report and took several photographs of the condition at the end of the tenancy.

The landlord seeks the following compensation:

Description	Amount
Chimney Cleaning	\$110.88
Removal of yard debris	\$184.80
Stove buttons – replacement	\$10.28
Recycle Bins	\$17.92
Cleaning Supplies	\$27.90
General Repairs and Replacements	\$467.03
Replacement Walkway Lighting	\$43.65
Replacement Outside Lighting	\$160.61
Fireplace Screen	\$39.18
Window Screen	\$35.84
Carpet Cleaning	\$271.48
Landlord's Labour for cleaning and repairs at \$30.00 per hour	\$1,035.00
Lost Rent – December 2011	\$1,450.00
<b>Total</b>	<b>\$3,854.57</b>

Chimney Cleaning – the landlord seeks chimney cleaning as she had cleaned it prior to the tenancy and she found a burned binder in the fireplace after the tenancy and was concerned the tenants may have caused damage by burning garbage. The tenant testified they did not burn garbage in the fireplace.

Removal of yard debris – while the tenant did not disagree that the landlord had to remove the debris she disagreed with the estimated cost, she felt it would be more like \$90.00 or \$100.00. During the hearing the landlord noted the amount requested was an estimate at the time of her Application, the actual cost was \$150.00.

Replacement stove buttons – the landlord testified there were 9 buttons missing out of 12 to 15. The tenant testified the stove was second hand when it was provided during the tenancy and that at that time one button was already missing and that through the tenancy more broke loose, the tenant could not recall what she did with the buttons.

Recycle Bins – the landlord contends there were bins provided at the start of the tenancy, the tenant disagrees. There was no written record of items provided by either party other than items noted in the tenancy agreement that include things like the fireplace screen and utensils; a compost container; burning barrel, outside lighting and hoses and reels.

General Repairs and Replacements – includes boards under the sink (replaced instead of cleaned); kitchen blind (replaced instead of cleaned); replacement stove hood filter;

kitchen faucet (already replaced once during the tenancy); broken bathroom faucet (5 years old); fireplace screen replacement (8-10 years old); and a window screen replacement (8-10 years old).

The tenant testified that the fireplace screen was already slightly damaged at the start of the tenancy and that the damage to the window screen was a result of the age of the screen. The tenant provided no other testimony regarding the general repairs and replacements.

Walkway Lighting – the landlord seeks compensation for damage to the walkway lights that were 8 to 10 years old. The tenant acknowledged that they may have caused this damage.

Outside Lighting – these lights are also 8 to 10 years old. The tenant contends that these lights were damaged as a result of snow falling off the roof that was covered with a tarp. The landlord testified that the wires had been cut which is not consistent with snow damage. The tenant testified that they had never turned these lights on and had moved some of them.

Carpet Cleaning – the tenant does not dispute the need for carpet cleaning but disagrees with the amount the landlord is claiming, the tenant suggests \$200.00 is more appropriate. The landlord testified the tenant did not even vacuum the carpets and had had a dog during the tenancy.

Landlord's Labour - the landlord seeks compensation for the labour involved in cleaning the house and yard and for make repairs. The landlord seeks \$30.00 per hour for 34.5 hours. The tenant testified that she felt they had cleaned the unit to the best of their ability and felt the amount of the landlord's claim for labour was too high.

December, 2011 Rent – the landlord testified that she had obtained an order of possession to end the tenancy on September 30, 2011 but that she had agreed to allow the tenants to stay for an additional month and prior to the end of October 2011 she agreed to extend the end of the tenancy until November 15, 2011.

The landlord testified that as a result of the condition of the rental unit and the time of year she has not yet been able to rent the unit to new tenants and seeks compensation for lost rent for the month of December 2011.

### 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.

I make the following findings in relation to the landlord's claim:

Chimney Cleaning – Residential Tenancy Policy Guideline #1 stipulates the responsibility for cleaning a fireplace chimney rests with the landlord. While I accept the landlord found a burned binder in the fireplace at the end of the tenancy there was no evidence before me that would suggest that the burning of any material in the fireplace would require the landlord to do any additional cleaning or treatment as a result of the tenant's activities. I dismiss this portion of the landlord's Application.

Removal of yard debris – as the tenant agrees the landlord had to remove the items from the yard I find the landlord has suffered a loss as a result of this tenancy and is entitled to compensation. While the tenant believes the amount of compensation should be less than the amount sought by the landlord, she has provided no justification for this difference. As such, and based on the documentation and testimony provided by the landlord, I find the landlord has established the value at \$150.00.

Replacement stove buttons – based on the testimony of both parties, I find the landlord has established the stove buttons were missing and that as a result the landlord has established a loss resulting from the tenancy. Despite the testimony of the tenant, she has provided no evidence that the issue of stove buttons was ever raised with the landlord. I also accept the landlord has established the value of these replacements through her documentary evidence.

Recycle Bins – from the material before me, I accept the tenant's position that the landlord did meticulously record a number of items that were included in the tenancy including things like a compost container and burning barrel. As such, I find, based on the balance of probabilities, if the landlord provided recycling bins she would have ensured it was documented. For this reason, I dismiss this portion of the landlord's application.

General Repairs and replacements – in regard to all of the items claimed under this heading, I find, based on the testimony of both parties, the landlord has establish a loss related to the tenancy. However in relation to the claim for replacing the boards under the sink and the blinds, I find the landlord, from her own testimony, did not even attempt to clean these items and from the photographic evidence I find the extent to the damage may have been mitigated had the landlord cleaned and painting the boards under the sink and cleaning the kitchen blinds. I dismiss this portion of the landlord's claim.

I accept the landlord has established the value of the replacement of the vent filter, the kitchen faucet, bathroom faucet, the fireplace screen, and a window screen. However, Residential Tenancy Policy Guideline #37 lists a charge of the life expectancy of various household items and materials and in the case of the fireplace screen (considered furniture) the useful life is 10 years.

As the landlord has testified the screen as 8 to 10 years old, I find the value presented by the landlord must be discounted by 100%. While there is no specific listing for window screens – windows are said to have useful life of 15 years and so in regard to the replacement value of the window screen I find the value must be discounted by 67%.

In regard to the faucets I accept the landlord's testimony that the faucet in the bathroom was 5 years old and the kitchen faucet was replaced sometime during the tenancy or within 4 ½ years and the useful life is deemed to be 15 years as such I find the values must be discounted by 33%.

Walkway and Outside Lighting – based on the testimony of both parties, I find the landlord has established a loss that results from the tenancy and that she has established the value of that loss. The useful life of light fixtures and wiring in the Guideline is 15 years and from the landlord's testimony these items were 8 to 10 years old so the value must be discounted by 67%.

Carpet Cleaning – based on the testimony of both parties I find the landlord has established a loss related to the tenancy and that she has established the value of this cost. As the tenant has provided no evidence as to why it should be cheaper, I find the landlord is entitled to compensation as identified in her claim.

Landlord's Labour – based on the documentary, photographic and testimonial evidence provided I accept, as reasonable, the landlord required 34.5 hours of labour to complete the repairs and cleaning and that a rate of \$30.00 per hour is reasonable. I find the landlord has provided sufficient evidence to establish this as the value of this loss.

December 2011 Rent – while I acknowledge the rental unit is still vacant I note that this tenancy should have ended several months prior to the actual date that it did end. I find however, the act of the landlord of agreeing to extension to the end date contributed to the issue of the time of year when the unit became available.

I also find that the landlord did have two weeks to clean and make repairs and that the repairs and cleaning that was required to make the unit ready for new tenants was relatively minor and could have been completed within the last two weeks of November 2011.

In addition, despite the landlord's testimony that she has been trying to rent the unit through advertising through Kijiji and a Used area website the landlord has provided no documentary or corroborating evidence to confirm this or confirm how long the landlord has been trying to re-rent the unit.

For these reasons, I find the landlord has failed to establish that she has taken all reasonable steps to mitigate this loss and I dismiss this portion of the landlords' Application.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,055.05** comprised of \$184.80 removal of yard debris; \$10.28 stove buttons; \$27.90 cleaning supplies; \$396.36 general repairs and replacements; \$14.40 Walkway lighting; \$53.00 outside lighting; \$11.83 window screen; \$271.48 carpet cleaning; \$1035.00 landlord's labour and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$1,051.53 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1003.52**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord 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: March 8, 2012.

---

Residential Tenancy Branch