



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR, MNSD, MNDC, MND, FF

### **Introduction**

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* for Orders as follows:

1. A Monetary Order for unpaid utilities - Section 67;
2. A Monetary Order for damages to the unit – Section 67
3. A Monetary Order in compensation for damage or loss under the Act, regulation or tenancy agreement – Section 67
4. An Order to retain the security deposit - Section 38
5. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and testimony in respect to their claims and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The landlord's claim on application is as follows:

1. Water bill for December 2011	\$68.21
2. Baseboard	\$4.77
3. Closet spring guides	\$8.96
4. Washing machine repair	\$84.50
5. Lock replacement	\$200.00
<b>Total of landlord's claim <i>on application</i></b>	<b>\$403.30</b>

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The following is undisputed. The tenancy began on February 01, 2011 and ended January 31, 2012. Rent in the amount of \$1100.00 was payable in advance on the first day of each month plus cost of utilities. At the outset of the tenancy both parties conducted a start of tenancy inspection. The landlord collected a security deposit from the tenant in the amount of \$550.00 which they still hold. An end of tenancy inspection was mutually conducted but the parties did not agree on the administration of the security deposit. The landlord received the tenant's written forwarding address on March 01, 2012 and made application claiming against the security deposit on March 12, 2012.

The balance of the relevant evidence in this matter is as follows. The tenant does not dispute the landlord's claim for items 1,2,3, and 4. The tenant agrees with a portion of the landlord's claim for the washing machine repair – in the amount of \$10.45 (washing machine knob). The tenant disputes the landlord's claim for lock replacement of \$200.00.

The parties agreed that the tenant had lost keys to the locks early in the tenancy, but that the landlord retains a key to the locks. The landlord testified their concern is that the locks are not secure if keys to them are missing. The landlord received an estimate of \$200.00 to replace the locks.

The landlord testified that the water level indicator knob on the washing machine had been broken and the resulting repair involved an amount of refurbishing of the indicator mechanism as well as replacement of the knob. The landlord provided an invoice for the total of the repair in the amount of \$84.50. The tenant testified acknowledging that the knob had been broken off by a family member early on in the tenancy and that the washing machine remained functional. However, they testified that they were not aware that the indicator mechanism required additional repair.

### **Analysis**

I have considered all evidence and all submissions to this claim and have considered all testimony given in the hearing. On preponderance of the evidence in this matter I have arrived at a Decision.

I must emphasize that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, solely, of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

As well, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement. In such a case, the onus is on the tenant to show that the expenditure claimed by the landlord is unreasonable.

Therefore, the claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify *the actual monetary amount of the loss or damage*. Finally, the claimant must show that reasonable steps were taken to address the situation and to reasonably mitigate the damage or losses that were incurred.

On the balance of probabilities and on the preponderance of all the evidence before me, I find the landlord has sufficiently met the test for their claim of damages and loss in respect to some portions of their claim.

**Residential Tenancy Policy Guideline #1 – Landlord and Tenant – Responsibility for Residential Premises**, in part, states as follows respecting appliances provided under the tenancy agreement (emphasis for ease)

### **MAJOR APPLIANCES**

1. At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.
2. If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.
3. **The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.**

The tenant acknowledged they were responsible for breaking the water level indicator knob on the washing machine. On balance of probabilities, I find that the tenant's action also likely resulted in the additional damage to the water level indicator mechanism and the ensuing total repair cost in the amount of **\$84.50**. Therefore, I grant this amount to the landlord.

The landlord has not met the test for their claim of damages and loss in respect to the replacement of locks. The landlord has not replaced the locks and has not provided evidence for this portion of their claim. As a result, **I dismiss** the landlord's claim for locks replacement in the amount of \$200.00, without leave to reapply.

I grant the landlord the agreed amount for damages for the two water bills, baseboard replacement, and closet spring guides, in the sum of **\$118.80**. As the landlord was partly successful in their claim, I grant the landlord recovery of the filing fee in the amount of **\$50.00**.

As for the monetary claim calculation, I find that the parties have established entitlements as follows:

1. Water bill for December 2011	\$68.21
2. Baseboard	\$4.77
3. Closet spring guides	\$8.96
4. Washing machine repair	\$84.50
5. Filing fee	\$50.00
<b>Award to landlord</b>	<b>\$253.30</b>
Minus Security deposit held by landlord	-\$550.00
<b>Balance to tenant – Monetary Order</b>	<b>(\$296.70)</b>

### **Conclusion**

**I Order** that the landlord may retain \$253.30 of the tenant's security deposit and return the balance of \$296.70 to the tenant, forthwith.

**I grant** the tenant a monetary order under Section 67 of the Residential Tenancy Act for the amount of **\$296.70**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: May 28, 2012

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Residential Tenancy Branch