



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, damages to the unit, for money owed or compensation for loss under the Act and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary for damages to the unit?

Is the landlord entitled to compensation for loss under the Act?

Is the landlord entitled to keep all or part of the security deposit paid?

### Background and Evidence

The tenancy began in August 2009. The parties entered into a new tenancy agreement on October 18, 2011. Rent in the amount of \$750.00 was payable on the first of each month. A security deposit of \$375.00 was paid by the tenant. Filed in evidence is a copy of the tenancy agreement, with an attached addendum.

The landlord claims as follows:

a.	Loss revenue for balance of fix term & utilities	\$ 8,243.17
c.	Missing furniture	\$ 148.35
d.	Jack for golf cart/axe	\$ 68.98
e.	Estimate to replace drapes	\$ 172.43
e.	Steam cleaning carpet	\$ 101.43
f.	Exterior and interior clean up (21 hr @ \$30.00 hr)	\$ 630.00
g.	Exterior cleanup – yard maintenance	\$ 310.42
h.	Garbage removal	\$ 213.92

i.	Home depot supplies	\$ 121.65
j.	Replacement linoleum tiles kitchen floor	\$ 50.00
k..	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$11,295.38</b>

#### Rent/loss revenue

The landlord testified that the tenant breached a fixed term tenancy agreement as the agreement signed on October 18, 2011, was a one year fixed term expiring on October 1, 2012.

The landlord testified the tenant should be responsible for paying the hydro bill they incurred, as a result of the tenant breaching the fixed term agreement.

The tenant acknowledged that she did not provide the landlord with thirty days notice to end tenancy.

The tenant testified that clause 2 in the addendum to the tenancy agreements states the tenancy is a month to month. The tenant stated she had the right to rely on the addendum.

#### Replacement furniture/ missing dresser

The landlord testified that the tenant damaged the furniture in the rental unit and they have estimated the cost to replace the furniture. The landlord stated that the existing furniture is between 10 and 15 years old. Filed in evidence are photographs of the furniture.

The landlord testified one dresser was also missing for the unit.

The tenant testified that the furniture was not damaged by neglect, the furniture was old and worn from normal wear and tear.

The tenant testified that the missing dresser was not the landlords. The dresser was original hers and she gave it to the prior tenant who resided in the unit and the dresser was left for her when she moved into the unit.

#### Jack for golf cart/axe

The landlord testified that the jack for the golf cart and axe were missing from the shed at the end of tenancy.

The tenant testified she never used the axe and it was in the shed. The tenant stated she is not aware of a golf cart jack.

#### Estimate to replace drapes

The landlord testified that the drape on the sliding door was stained. The landlord stated this stain is not noted on the move-in inspection report. The landlord stated the drape was purchased in 2008 and it is estimated to cost \$34.48 to replace. Filed in evidence is a copy of the move-in inspection. Filed in evidence is a photograph of the drape.

The landlord testified that the drapes in the bedrooms need to be replaced as they are fraying at the ends and appear to have stains.

The tenant testified that she does not recall any stain on the sliding door drape. The tenant stated that if the drapes in the bedroom are fraying it's from the type of fabric and normal wear and tear. The tenant stated there were no stains on the bedroom drapes. Filed in evidence are photographs of the bedroom drapes.

#### Steam cleaning carpet

The landlord testified that the tenant did not steam clean the carpets at the end of tenancy. The landlord is seeking compensation in the amount of \$101.43. Filed in evidence are receipts for the rental of the machine and cleaner.

The tenant acknowledges she did not steam clean the carpets at the end of tenancy.

#### Exterior and interior clean up (21 hr @ \$30.00 hr)

The landlord testified that it took three people seven hours to clean the garbage that was around the exterior of the property and to clean the interior, such as carpet cleaning. Filed in evidence are photographs of the exterior of the property.

The tenant testified that not all of the garbage and items around the exteriors was her, as there was stuff in the shed and other items left on the property. The tenant stated that the house was clean, except for the steam cleaning of the carpets. Filed in evidence are photographs of the unit.

#### Exterior cleanup – yard maintenance

The landlord testified the tenant did not maintain the yard as per the addendum to the tenancy agreement. The landlord stated he paid \$310.42 to have the yard and gardens cleaned and maintained.

The tenant testified that she was not to maintain the yard at a higher level than when she moved into the rental unit. The tenant does not agree that she is responsible for any gardens.

### Garbage removal

The parties agreed to share the cost of the garbage disposal fee.

### Home depot supplies

The landlord testified that the tenant did not replace the burnt out light bulbs at the end of tenancy. The landlord stated that the tenant did not return the key and the lock was replaced.

The landlord testified a tarp was purchased so the neighbour was not required to look at the garbage pile, while they waited for the garbage to be picked up.

The tenant acknowledged that there were burnt out light bulbs and the key was not returned. The tenant stated she is not responsible to pay for any items relating to mice that are on the receipt. The tenant stated she is not responsible for the tarp purchased.

### Replacement tiles kitchen floor

The tenant acknowledged that her child had placed stickers on three kitchen linoleum tiles which caused damage. The tenant stated the cost of replacing the tile is high.

The landlord testified that the \$50.00 is to replace and hire a person that is qualified to fix the tiles.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the landlord has the burden of proof to prove a violation of the Act and a corresponding loss.

### Rent/loss revenue

The tenant acknowledged that she did not provide the landlord with the proper thirty day notice to end tenancy in accordance with the Act. Therefore, I find the landlord is entitled to compensation for January 2012, rent in the amount of **\$750.00**.

In this case, the tenancy agreement is conflicting as the length of tenancy indicated a one year fixed term. However, the attached addendum stated that it is a month to month tenancy. The tenant had the right to rely on the attached addendum. Therefore, I find the landlord is not entitled to loss of revenue after January 2012.

The landlord has provided insufficient evidence regarding the hydro bill for January 2012, such as what the temperature of the unit was set at while the unit was empty. There were no invoices for prior months to show the amount was reasonable. Therefore, I find the landlord is not entitled to compensation for re-imbursements for the January 2012, hydro bill.

#### Replacement furniture/ missing dresser

In this case, the landlord's evidence was the furniture was at least ten years old. The evidence of the tenant was the furniture was worn from normal wear and tear and not from neglect. The photographic evidence of the landlords supports the tenants claim that the furniture was worn from age and not by the actions or neglect of the tenant. Therefore, I find the landlord is not entitled to compensation for the furniture.

The evidence of both parties was the previous tenant left a dresser. The evidence of the tenant was this dresser originally belonged to her and she gave it the prior tenants who returned it to her when they left the rental unit.

I find there is insufficient evidence to prove who the owner of this dresser was as there was no itemized list of what items were included in the tenancy agreement . I find the landlord has not proven a loss exists. Therefore, I dismiss the landlords claim for compensation for the dresser.

#### Jack for golf cart/ax

In this case, a jack for a golf cart and an axe has gone missing. As there is no itemized list of what items were included in the tenancy agreement, I find the landlord has not proven these items were left in the tenants care. Therefore, I dismiss the landlord's claim for compensation for the golf jack and axe.

#### Estimate to replace drapes

In this case, the evidence of the landlord was the drape on the sliding door was stained. The photographic evidence support the landlord claim, the move-in inspection report does not show any stain on the drape at the start of tenancy.

Policy Guideline 37 states the useful life of a drape is 10 years. In this case the drape was four years old. The evidence of the landlord was it is estimated to cost \$34.48 to replace the drape. As the drape was four years old, the landlord is entitled to the depreciated value of sixty percent. Therefore, I find the landlord is entitled to compensation for the estimate cost of replacing the drape on the sliding door in the amount of **\$20.68**.

The evidence of the landlord was the bedroom drapes needed to be replaced due to stains and fraying. The evidence of the tenant was the fraying of the drapes was due to normal wear and tear and not neglect. The photographic evidence submitted by both parties do not show any fraying or staining, the drapes appear to be worn. I find the landlord has not proven the bedroom drapes were damaged by the action or neglect of the tenant. Therefore, I dismiss the landlords claim for compensation.

#### Steam cleaning carpet

The tenant acknowledged the carpets were not steam cleaned at the end of tenancy.

Policy Guideline 1. Landlord & tenant – responsibility for residential premises states the tenant is responsible for steam cleaning the carpets after a tenancy of one year.

As this tenancy commenced in 2009, the tenant was responsible to ensure the carpets were steam cleaned at the end of tenancy. Therefore, I find the landlord is entitled to compensation for the rental of the machine and cleaner purchased in the amount of **\$101.43**.

#### Exterior and interior clean up (21 hr @ \$30.00 hr)

The evidence of the landlord was it took three people seven hours to clean the exterior and interior of the rental property. The evidence of the tenant was not all the items removed from the property were hers.

The photographic evidence does show there was a large amount of items left around the exterior of the property. However, I find twenty-one hours excessive and \$30.00 per hour excessive. I will allow the landlord seven hours at the rate of \$15.00 per hour for exterior cleaning. Therefore, the landlord is entitled to compensation in the amount of **\$105.00**

The evidence of both parties was the tenant did not steam clean the carpets. As a result I will allow the landlord three hours at the rate of \$15.00 for cleaning the carpets. Therefore, the landlord is entitled to compensation in the amount of **\$45.00**.

#### Exterior cleanup – yard maintenance

The evidence of the landlord was the tenant was to maintain the gardens and yard. The addendum to the tenancy agreements states the tenant is responsible for regular

external maintenance. As there is a dispute as to what regular maintenance mean, I must refer the parties to the policy guidelines.

Policy Guideline 1. Landlord & tenant – responsibility for residential premises states generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

The landlord's documentary evidence filed shows bulbs, and plants were purchased and planted by the company hired. Under the policy guidelines tenants are only responsible to weed the garden if there is a specified requirement to maintain the flower bed in the tenancy agreement and in this case there is no specified requirement. Tenants are not responsible to beautify the landlords' property by purchasing bulbs or plants.

However, the tenant was responsible for routine yard maintain, which includes cutting grass. As the documentary evidence file indicated the company was paid thirty dollars per hours, I will allow three hours at that rate. Therefore, the landlord is entitled to compensation for regular yard maintenance in the amount of **\$90.00**.

#### Garbage removal

The parties agreed to share the cost of disposal of the garbage. Therefore, I find the landlord is entitled to compensation in the amount of **\$106.50**.

#### Home Depot supplies

The tenant acknowledged that she is responsible for some of the items on the home depot receipts. The evidence of the landlord was that a tarp was purchased to cover up the garbage while waiting for pickup. I find the tenant is not responsible for the tarp or any items related to mice. Therefore, I grant the landlord compensation in the amount of **\$49.78**.

#### Replacement tiles kitchen floor

In this case, the tenant acknowledged the stickers that were placed on the linoleum tile caused damage to the floor. I find that the cost the landlord is seeking is reasonable. Therefore, I grant the landlord compensation to replace the tiles in the amount of **\$50.00**.

The landlord has established a monetary order in the amount of **\$1,368.39** comprised of the above amounts and as the landlord has only been partially successful the landlord is granted a portion of the filing fee in the amount of \$50.00.

I order that the landlord retain the security deposit of \$375.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$993.39**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for the balance due.

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 31, 2012.

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Residential Tenancy Branch