



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR, MND, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for utilities and damages to the rental unit totalling \$1,001.88.

Despite service by registered mail sent on May 4, 2012, the tenant did not appear.

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

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for utilities, cleaning and damage.

### **Background and Evidence**

The tenancy began in May 2008 and was ended through dispute resolution based on a Ten Day Notice to End Tenancy for Unpaid Rent. The tenant vacated on February 29, 2012 pursuant to the Order of Possession issued February 23, 2012. The subsidized rent was \$822.00, which included \$40.00 per month for cable. A \$500.00 security deposit, paid in May 2008, is currently being held in trust on behalf of the tenant.

Submitted into evidence was a copy of the tenancy agreement, photos, copies of invoices and copies of communications, including a written forwarding address that the landlord testified was faxed to them by the tenant.

Also in evidence was a copy of the move-in condition inspection report signed by both parties and a move-out condition inspection report apparently completed in the tenant's absence on February 29, 2012. The landlord testified that the move-out condition inspection had to be conducted without the tenant because the tenant refused the landlord's verbal request to do the move-out inspection. In addition, the landlord submitted a copy of a "*Notice of Final Opportunity to Schedule a Condition Inspection*" that was served by posting it on the tenant's door on February 29, 2012. The Notice proposed that the move-out condition inspection would take place at 10:00 a.m. on March 1, 2012.

The landlord testified that the tenant had failed to pay for cable utilities and accrued arrears that totalled \$185.00 for cable costs. The landlord pointed out that the tenancy agreement contained a term that required the tenant to pay cable and a letter in evidence from the landlord to the tenant dated July 15, 2011 set the monthly amount at \$40.00. The landlord also provided a letter dated October 24, 2011 stating that the tenant was in arrears at that time for \$200.00 for unpaid cable. The landlord's evidence also included a "*Move Out Statement*" dated April 10, 2012 that showed various charges under the heading, "*Details of Outstanding Balance*" with a total amount shown as \$185.00.

The landlord is claiming \$150.00 for removal of garbage, including mattresses that were apparently left near the garbage disposal area outside the complex, for which the landlord holds the tenant solely responsible. The landlord testified that they are certain that these items were left only by the tenant, and were not left by other residents living in the complex, because some of the discarded papers contained the tenant's name. A copy of the invoice for the dumping fees for 3 mattresses was in evidence.

The landlord is claiming \$133.28 for carpet cleaning, confirmed by an invoice in evidence and \$120.00 for 6 hours of cleaning, as noted on the time sheet from the cleaners. The landlord also made reference to photos in evidence.

The landlord is claiming \$155.00 for missing and damaged blinds. The landlord supplied receipts for newly-purchased blinds and a photo of the alleged damage. The landlord testified that the blinds were approximately 5 years old.

The landlord is claiming \$45.23 for changing the locks and \$98.00 to deactivate the remote code. The landlord made reference to invoices in evidence confirming these charges.

The landlord is claiming \$115.00 to replace damaged closet doors and pointed out two photos showing one door that appeared to have a puncture hole. The landlord testified that they replaced the damaged door from their stock supplies of spare doors. The landlord testified that the age of the closet door is unknown.

The total monetary claim submitted by the landlord for the damages described above was \$1,001.88.

### **Analysis**

With respect to an applicant's right to claim damages from another party, section 7 of the Act provides that if a party fails to comply with the Act or agreement, the non-complying party must compensate the other for any damage or loss that results. It is important to note that in a claim for damage or loss under the Act, the party claiming the

damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent 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

Cable Arrears

The landlord was claiming cable utilities that the tenant failed to pay in violation of the tenancy agreement. According to the landlord, cable is charged at \$40.00 per month under a term in the tenancy agreement. I accept as a fact that the tenant was required to pay \$40.00 for the cable costs under the agreement.

The Move Out statement dated April 10, 2012, that was submitted into evidence by the landlord, appeared to show that \$40.00 was due in May 2011 for "*Tenant Rent Contribution*", \$40.00 in June 2011 for "*Tenant Rent Contribution*", \$15.00 in July 2011 for "*Tenant Rent Contribution*", \$25.00 for "*Ret. Ch.*", \$15.00 in September 2011 for "*Tenant Rent Contribution*", \$10.00 for "*Ret. Ch.*" and finally, \$40.00 in February 2012 for "*Tenant Rent Contribution*".

I find this financial statement unclear as it does not clarify what the charges labelled "*tenant rent contribution*" actually pertain to and what, if any, payments were made by the tenant during the period in question. There are also some amounts listed that seem to pertain to charges other than the cable. I find that, although the total for the ten-month period from May 2011 to February 2012 is shown as \$185.00, the arrears shown as "*tenant contribution*", presumably cable costs, appear to inconsistent with the amount shown as cable arrears owed in the letter dated November 2011. As of that date, the cable account was shown to be \$200.00 in arrears. I find that the cable payments and charges are not completely documented in the evidence submitted.

Because I am not able to determine the arrears for cable costs and what payments were made towards the debt, I find that the landlord's claim has failed to satisfy element 3 of the test for damages. However, I do accept that the landlord is at least entitled to \$40.00 for cable for the month of February 2012.

### Move-In And Move-Out Condition Inspection Reports

In regard to the claimed costs for cleaning and damages, I find that section 37(2) of the Act states 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.

In establishing whether or not the tenant had complied with this requirement, I find that this can best be established with a comparison of the unit's condition when the tenancy began with the final condition of the unit after the tenancy ended, that is through the submission of move-in and move-out condition inspection reports containing both party's signatures.

Section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, the landlord conducted a move-in condition inspection with the tenant on April 8, 2008, that appeared to have been signed "on move in" by both parties. However, the move-out condition inspection report was done in the tenant's absence and was not signed by the tenant.

With respect to the move out inspection, section 35 of the Act states that, in arranging the move-out inspection, the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Part 3 of the Regulation goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and the content of the Reports to be conducted and section 17 of the Regulation states that:

- (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
  - (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
  - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
- (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations

of the other party that are known and that affect that party's availability to attend the inspection.

The Act states that the landlord must make the inspection and complete and sign the report without the tenant if:

- (a) the landlord has complied with subsection (3), and
- (b) the tenant does not participate on either occasion.

Although I accept that the landlord may have verbally attempted to schedule the timing for the move-out inspection with the tenant, I find that the landlord did not submit any evidence documenting these communications. I find that the landlord failed to offer the tenant two different inspection dates in writing.

Despite the above, I find that the landlord did issue a "Notice of Final Opportunity to Schedule a Condition Inspection" on the approved form as required under the Act and posted it on the tenant's door. I note that the Notice indicated that the move-out inspection was scheduled for March 1, 2012 at 10:00 a.m.

However, I find that the landlord had already proceeded to complete the move-out condition inspection on February 29, 2012, prior to the date shown on the landlord's "Notice of Final Opportunity", that had set March 1, 2012 as the date.

Section 36 (2) of the Act states that the right of the landlord to claim against a security deposit, for damage to residential property is extinguished if the landlord does not comply with section 35 (2) [*2 opportunities for inspection*].

Section 21 of the Residential Tenancy Regulations states that, in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is considered as evidence of the state of repair and condition of the rental unit on the date of the inspection. As I have found that the move-out condition inspection report was not properly completed in compliance with the Act, I find that the contents of the move-out inspection report cannot be assigned significant evidentiary weight with respect to damages. However, I will still consider the landlord's claim of damages based on the other evidence submitted by the landlord.

### Garbage Removal

I accept that the landlord did incur \$150.00 in costs for garbage removal. However, I find that the landlord's claim for garbage removal fails element 2 of the test for damages because the items in question were left outside and the applicant submitted insufficient evidentiary proof to verify that the tenant was solely liable for the haulage costs.

### Carpet Cleaning

With respect to the \$133.28 claimed for carpet cleaning, I accept, on a balance of probabilities, that the carpets needed to be shampooed and this claim is allowed.

### Cleaning

With respect to the claim of \$120.00 for 6 hours of cleaning, I find that the photos verified that there were areas of the rental unit that were not reasonably clean, including the glass on the oven door. However, based on the photos, it is evident that the landlord had moved the appliances to photograph soiled areas underneath and adjacent to them. I find that the tenant is only responsible to clean areas beside or behind the appliances if the stove and refrigerator were on casters and if these appliances were also moved out during the move-in inspection as well. No evidence was provided to confirm that this was the case. With respect to the areas on the window sills, it appears that the discoloration shown on the sills and upwards may possibly be stains from mildew or moisture infusion. I accept that the unit was mostly left in a reasonably clean state and find that the landlord is entitled to a portion of the cleaning costs in the amount of \$60.00.

### Blind Replacement

With respect to the \$155.00 for the purchase of new blinds, I find that the landlord has not succeeded in proving that the tenant had removed any of the window coverings nor that the crimp shown in the picture of one set of blinds had affected its function.

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 the pro-rated value of the replaced item, reference is made to what the normal useful life would be of the item as provided in Residential Tenancy Policy Guideline 37.

In determining whether this tenant damaged the blinds or whether they were only subjected to normal wear and tear, for which the tenant would not be responsible, I find that there is no way to know how much stress or abuse was imposed on these blinds by previous occupants, nor what quality of blind was installed. If the blind is still functional, there may be an expectation under section 7(2) that the landlord mitigate. Given the age of the blinds and the other evidence, I find that the landlord would only be entitled to a portion of the claim for blinds in the amount of \$50.00.

### Changing Locks

With respect to the landlord's claim for \$45.23 for changing the locks and \$98.00 to deactivate the remote code, I find that Section 25 of the Act places the responsibility for

the cost of changing the locks at the beginning, or end of the tenancy on the landlord. Section 25(1) states that at the request of a tenant at the start of a new tenancy, the landlord must:

(a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and

(b) pay all costs associated with the changes under paragraph (a).

Section 25 (2) states that, if the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

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.

Given the above, I find that the landlord is not entitled to compensation for the locks as this would likely be an expenditure incurred for the new tenant for which the landlord is responsible under section 25 of the Act.

### Closet Doors

With respect to the \$115.00 being claimed for the damaged closet doors, I find that this claim failed element 3 and 4 of the test for damages. The costs incurred by the landlord were not adequately verified and it appears that the compromised door is still functional. The age and pro-rated value of the closet doors is also a factor in dismissing this claim.

I find that the landlord has established a total monetary claim of \$333.28, comprised of \$40.00 for verified cable arrears, \$133.28 for carpet cleaning, \$60.00 for cleaning, \$50.00 towards the blinds and the \$50.00 cost of this application. I order that the landlord retain this amount from the tenant's security deposit of \$500.00 leaving a balance due of \$166.72 still owed to the tenant.

### Conclusion

I hereby grant the tenant a monetary order under section 67 for \$166.72. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and 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: June 27, 2012.

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Residential Tenancy Branch