



# 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 the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Residential Tenancy Branch Rule of Procedure 3.1 states that together with a copy of the Application for Dispute Resolution the applicant, in this case the landlord, must serve the respondent, in this case the tenant, with copies of, among other things, the details of the monetary claim and any other evidence the applicant intends to rely upon.

Rule 3.5 states that for evidence not available at the time the Application was submitted to the Residential Tenancy Branch the applicant must serve the respondent as soon as possible and at least 5 days prior to the prior to the hearing. "At least" excludes the day the evidence is received; the day of the hearing; and any weekend days or statutory holidays in between. In the case before me the deadline to meet this requirement would have been June 29, 2012.

At the outset of the hearing the tenant identified that she had not received some of the landlord's evidence until Friday July 6, 2012. The landlord confirmed she served the tenant with her additional evidence on Thursday July 5, 2012. As such, I find the landlord did not comply with the rules of procedure and I advised both parties I would not be considering the landlord's late evidence.

Residential Tenancy Branch Rule of Procedure 4.1 requires a respondent, in this case the tenant, to serve all evidence they intend to rely upon to the applicant, in this case the landlord, as soon as possible and at least 5 days prior to the hearing. "At least" excludes the day the evidence is received; the day of the hearing; and any weekend days or statutory holidays in between. In the case before me the deadline to meet this requirement would have been June 29, 2012.

The tenant also identified that despite providing some documentary evidence to the Residential Tenancy Branch she did not serve the landlord with her evidence. As such, I advised both parties I would not consider the evidence submitted by the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid utilities; for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on April 27, 2011 for a month to month tenancy beginning on April 28, 2011 for a monthly rent of \$1,000.00 and ½ utilities due on the 30<sup>th</sup> day of each month with a security deposit of \$500.00 and a pet damage deposit of \$500.00 paid.

The landlord testified the tenant had paid the security deposit in full but had not made the last instalment towards the pet damage deposit and had only paid \$340.00. The tenant testified that she had paid the full \$500.00 for the pet damage deposit.

The landlord is claiming for replacement of the toilet as it was cracked all over the place. The tenant testified that the toilet had all the cracks right from the start of the tenancy. The Condition Inspection Report submitted into evidence indicates the toilet was in good condition at the start of the tenancy and had a cracked bowl at the end of the tenancy. The landlord has not provided any evidence, in the allowable evidence, to establish the value of a replacement toilet.

The landlord seeks compensation to replace the screen door because she contends the tenant's dog had punctured holes in the screen. The landlord seeks to have the whole door replaced because she states that it would be too costly to just have the screen replaced. The landlord believes it would take a handyman 2 hours to replace the screen at \$40 to \$50.00 per hour and that even though the door she seeks to purchase is \$89.99 it would only take a ½ hour to install and she could get a friend to do it.

The landlord seeks compensation from the tenant to repair and replace caulking in and around the bathtub because she asserts that if the tenant had reported the problems to the landlord during the tenancy it would have cost the landlord less to complete the repairs. The landlord provided no evidence of what repairs were required from not reporting the problem earlier or how they differed from any repairs that would have been made earlier in the tenancy.

The tenant testified that she sent the landlord a letter on February 17, 2012 complaining about the caulking problem in the bathroom; that the landlord's boyfriend checked out the problem and determined that nothing needed to be done. The landlord did not provide any response to this portion of the tenant's testimony.

The landlord seeks compensation for the costs of repairing the tub surround; installing a toilet; and removal of debris in the amount of \$150.00.

The landlord seeks compensation for cleaning because the tenant had not left the rental unit in the same condition, in terms of cleanliness, as it was at the start of the tenancy. While the tenant agreed she did not complete all the cleaning she did not accept that the unit required cleaning in the amount of \$210.00 as claimed by the landlord.

The parties agree the tenant owes the landlord for gas and hydro utilities. The landlord submits the amount owed is \$54.42 and the tenant does not dispute this amount.

### 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.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the landlord filed her Application for Dispute Resolution to claim against the deposits on May 14, 2012 and the end of the tenancy was April 30, 2012 the landlord has complied with Section 38(1) of the *Act*.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Despite the tenant's assertion that the toilet bowl was cracked from the start of the tenancy, I find, based on the landlord's testimony and the Condition Inspection Report that the toilet cracking occurred during the tenancy. However, the landlord has failed to provide any evidence that I could consider establishing the value of a replacement toilet and I therefore dismiss this portion of her claim.

I also, from the testimony of both parties, accept that the screen on the screen door was damaged during the tenancy. I accept the landlord has established the value of a replacement door, however, I am not satisfied the landlord took all reasonable steps to

mitigate the damage or loss by considering replacing the screen only. As a result, I dismiss this portion of the landlord's claim.

As the landlord has provided no evidence that a delay in reporting a problem the caulking problem in the bathroom resulted in additional costs to the landlord for repairs to the tub surround, I dismiss this portion of the landlord's claim.

While I accept that the tenant confirms the unit could use more cleaning, I note also that the landlord asserted the tenant did not leave the unit in the *same* condition, in terms of cleanliness, as it was at the start of the tenancy.

However, Section 37 only requires the unit be "reasonably clean" and not necessarily in the same condition as the start of the tenancy. As such, I find the landlord's expectation of the standard of cleaning exceeds the requirements of the *Act*. For these reasons I find the landlord is entitled to compensation for cleaning in amount equal to half that claimed by the landlord.

In relation to the landlord's claim for compensation for \$150.00 that included repairs to the tub surround (addressed above), installation of toilet and removal of debris. I find the landlord, as noted above, the landlord has established the replacement toilet resulted from the tenancy and despite my finding above that she did not establish the value of the replacement toilet, I find she is entitled to compensation for the installation of the toilet.

From the Condition Inspection Report I note there is no mention of the need to remove any debris from the rental unit with the exception of the landlord's testimony that it took her two hours to clean up the yard from debris and dog feces at the end of the tenancy. As the tenant acknowledged that she had not removed all dog feces, I find the landlord is entitled to compensation for this removal.

As the landlord has not attributed any particular amount to the three individual items covered by the \$150.00 I find as the landlord has established a loss from only 2 of the 3 items I grant the landlord 2/3 of the amount claimed.

As the tenant does not dispute the landlord's claim for \$54.42 for gas and hydro utilities, I find the landlord is entitled to this amount of compensation for the utilities.

Despite the landlord's testimony that she believed the tenant failed to pay the full pet damage deposit and as the tenant testified that she did pay the deposit in full, I find the landlord has failed to establish the tenant did not pay it in full and as such I find the landlord holds a security deposit of \$500.00 and a pet damage deposit of \$500.00.

## Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$259.42** comprised of \$54.42 utilities owed; \$105.00 cleaning; \$50.00 toilet installation; and \$50.00 debris removal. As the landlord was largely unsuccessful in her claim I dismiss the portion of her application seeking to recover the \$50.00 fee paid by her for this application.

I order the landlord may deduct this amount from the security deposit and pet damage deposit held in the amount of \$1,000.00 in satisfaction of this claim. I grant a monetary order to the tenant for return of the balance of the deposits in the amount of **\$740.58**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant 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: July 10, 2012.

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Residential Tenancy Branch