



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the pet and or security deposit, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The parties agreed they entered into a fixed term tenancy agreement that began on May 24, 2011, and was scheduled to end May 31, 2012. Rent was payable on the first of each month in the amount of \$1,650.00 and on May 10, 2011 the Tenant paid \$825.00 as the security deposit and on June 1, 2011 the Tenant paid \$500.00 as the pet deposit. The parties conducted the move in inspection on May 24, 2011 and the move out inspection on April 30, 2012. The Tenant provided written notice to end her tenancy early and vacated the property by April 30, 2012.

The Landlord submitted into evidence documents outlining her monetary claim, letters between the parties, and a notice of final opportunity to schedule a condition inspection, the tenancy agreement, and the condition inspection report form which was signed by both parties.

The Landlord is seeking compensation as follows:

- 1) **\$179.75** Hydro charges, the Tenant agreed in writing, to have this amount withheld from her security deposit and knew it was an estimate of final charges at the time she agreed to it.

- 2) **\$34.74** Water utilities, the Tenant agreed in writing, to have this amount withheld from her security deposit and knew it was an estimate of final charges at the time she agreed to it.
- 3) **\$58.79** Sewer charges as per the invoice that was submitted into evidence
- 4) **\$400.00** Liquidated damages, which the Landlord determined to be an estimate of her costs to re-rent the unit including the Landlord's time to advertise on line, manage e-mails, set up appointments, schedule and attend viewing of the unit, reference and credit checks, and completing the paperwork.
- 5) **\$71.87** Fridge Door Handle which was broken during the tenancy
- 6) **\$189.27** Toilet tank replacement (\$155.38) & door knob (\$33.89). The Tenant had agreed to replace the broken toilet tank lid no later than May 1, 2012. The Tenant's daughter provided a used lid around May 3, 2012 which did not fit the toilet tank so the Landlord was forced to purchase a new tank with a lid as replacement lids cannot be purchased. The existing tank was purchased in 2008. Also, the Tenant had agreed to return the key for the door handle no later than May 3, 2012 and when she did not the Landlord purchased a new handle.
- 7) **\$50.00** Labour to install toilet tank
- 8) **\$15.00** Door knob installation
- 9) **\$15.00** Labour to install living room light fixture. The light fixture was broken during the tenancy and the Tenant purchased a new light which had to be installed.
- 10) **\$26.00** Replacement of 13 light bulbs

The Landlord pointed to the condition inspection report form where the Tenant signed agreeing to have items 1, 2, 3, 5, 10, (as listed above) deducted from her security deposit. The Tenant also agreed to have items in # 6 returned or replaced no later than May 3, 2012 and did not.

The Landlord also submitted evidence of the value of the furnace oil that was remaining in the tank and has included a **credit of \$419.00** towards the amounts being claimed above.

Upon review of the above items the Tenant confirmed she signed agreeing to deductions from her security deposit as noted above however she questioned why the original utility bills were not provided as evidence to this claim. She also noted that the sewer invoice is from 2011 and that she should not be responsible to pay for sewer charges as this is not a charge that was agreed to in her tenancy agreement.

The Tenant stated she should not be responsible for the liquidated damage charges as she provided two months notice to end her tenancy early and the Landlord was able to re-rent the unit as of April 30, 2012. She also argued that she should not have to pay for the cost to replace the entire tank when it was only the lid that broke.

The Tenant stated she accepts responsibility for the hydro and water charges but questioned the amounts (\$179.75 + \$34.74). She agreed to the following items and amounts: the fridge door \$71.87, replacement door knob \$33.89, \$15.00 labour to install door knob, \$15.00 to install light fixture, and \$26.00 for light bulbs.

The Landlord confirmed the Tenant provided her forwarding address on the move out condition report form on April 30, 2012. The Landlord acknowledged that she retained the pet deposit pending the outcome of this hearing, even though there was no pet related damage, and even though she knew her total claim would be less than the security deposit she held in trust.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

After review of the evidence before me I find the Tenant agreed, in writing, to have charges deducted from her security deposit and that she accepted responsibility for damages for other items during this proceeding. Therefore I approve the claim for: hydro and water charges \$179.75 + \$34.74, the fridge door \$71.87, replacement door knob \$33.89, \$15.00 labour to install door knob, \$15.00 to install light fixture, and \$26.00 for light bulbs. Accordingly, I award the Landlord **\$376.25**.

I accept the Tenant's argument that she is not responsible to pay for sewer costs as this is not a charged agreed to in the tenancy agreement. Therefore I dismiss the Landlord's claim of \$58.79 for sewer costs.

The tenancy agreement provided for liquidated damages of \$400.00. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I accept the Landlord's testimony that this amount is reasonable as she has

incurred costs in having to re-rent the unit prior to the end of this fixed term tenancy. Therefore I award the Landlord **\$400.00** for liquidated damages.

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. 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 depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40*.

The evidence supports the toilet tank lid was broken during the tenancy and although the Tenant agreed to have it replaced the one she provided to the Landlord did not fit the tank. The existing toilet was four years old; therefore I award the Landlord a depreciated amount for having to purchase the entire tank and lid in the amount of \$108.75 plus \$10.00 labour to install the tank and lid for a total award of **\$118.75**.

The Landlord has primarily been successful with her claim; therefore I award recovery of the **\$50.00** filing fee.

Section 31 of the *Residential Tenancy Policy Guideline* stipulates that a landlord may apply to an arbitrator to keep all or a portion of the pet deposit but only to pay for damage caused by a pet.

In cases like this one, where there is no damage relating to the pet the landlord is required to return the pet deposit to the tenant within 15 days of the later of the two: of the tenancy ending and having received the tenant's forwarding address in writing.

In this case the landlord received the Tenant's forwarding address on April 30, 2012, the date the tenancy ended, however the Landlord did not return the pet deposit within 15 days of that date.

Because the Landlord failed to return the Tenant's pet deposit within 15 days of having received her forwarding address, section 38 of the Act requires that the Landlord pay the tenant double the amount of the pet deposit.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Damages accepted by the Tenant	\$376.25
Liquidated Damages	400.00
Toilet Tank and Installation	118.75
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b><u>\$945.00</u></b>
<b>LESS:</b> Credit for Oil in Tank	- 419.00
Security Deposit \$825.00 + Interest 0.00	-825.00
Double the Pet Deposit 2 X \$500.00 plus Interest of 0.00	<u>-1,000.00</u>
<b>Offset amount due to the Tenant</b>	<b><u>- \$1,299.00</u></b>

I HEREBY ORDER the Landlord to issue payment to the Tenant in the amount of **\$1,299.00**, forthwith.

### Conclusion

The Tenant has been issued a Monetary Order in the amount **\$1,299.00**. This Order is legally binding and must be served upon the Landlord.

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.

---

Residential Tenancy Branch