



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for damage to the unit, site or property pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that on May 29, 2012, the tenant handed him his written notice to end this tenancy by June 30, 2012. The tenant confirmed that he received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on July 18, 2012. I am satisfied that the parties served one another with the above documents in accordance with the *Act*.

The landlord testified that he sent a copy of his written and photographic evidence package to the tenant approximately two weeks before this hearing by registered mail. The tenant confirmed that he received the landlord's evidence package on September 21, 2012. He said that he is currently working out of town and that his wife faxed him this information to him. He testified that he has had an adequate opportunity to review the landlord's evidence, although he commented that the photographs faxed to him by his wife are somewhat unclear. He understood that the original photographs sent by the landlord to his mailing address are of good quality and that any problems of legibility result from the quality of the fax he received from his wife. I am satisfied that the tenant was provided with an adequate opportunity to respond to the case against him and was able to prepare for this hearing.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security

deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, and miscellaneous documents, estimates and receipts, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

This tenancy for the upper suite in a two unit dwelling commenced initially on February 1, 2010 for a one-year fixed term. The landlord lives downstairs in the other unit in this building. He shared laundry facilities with the tenant. The parties entered into another one-year fixed term tenancy agreement that commenced on February 1, 2011. At the expiration of that fixed term, the tenancy continued as a periodic tenancy. Monthly rent by the time the tenancy ended on July 5, 2012, was set at \$1,426.05, payable in advance on the first of each month. The landlord continues to hold the tenant's \$675.00 security deposit paid on February 1, 2010. The parties agreed that the tenant vacated the rental premises on June 30, 2012.

The landlord entered into written evidence copies of the joint move-in condition inspection report of January 30, 2010. The landlord testified that he made two written attempts to arrange a joint move-out condition inspection of the rental premises. He entered into written evidence a copy of his Final Notice requesting a condition inspection on July 5, 2012. The tenant said that he advised the landlord that he could not attend the originally scheduled move-out condition inspection, but did attend on July 1, 2012 to participate in the move-out inspection, the time the tenant identified as suitable for this activity. The landlord entered into written evidence a copy of the move-out condition inspection report that he conducted on July 5, 2012. The tenant confirmed that the landlord sent him a copy of that report.

The landlord's application for a monetary award of \$3,715.36 included the following:

<b>Item</b>	<b>Amount</b>
Repairs	\$2,365.36
Unpaid June 2012 Rent	625.00
Request to Retain the Security Deposit	675.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award Requested</b>	<b>\$3,715.36</b>

After submitting his application for dispute resolution on July 14, 2012, the landlord entered into written evidence a September 1, 2012 Monetary Order Worksheet. This Worksheet was part of a late written evidence package received by the Residential Tenancy Branch on September 24, 2012. This two-page Worksheet provided detailed calculations for the monetary award the landlord was seeking. The 18 items listed on this Worksheet resulted in a total sum of \$5,194.09. As this amount was significantly higher than the amount originally claimed by the landlord and the landlord did not take any action to formally amend his application for dispute resolution to reflect the increased amount of the monetary award he was requesting, I advised during the hearing that the maximum monetary award that I would be considering would be the \$3,715.36 that the landlord had requested in his application for dispute resolution. I do so as I am not satisfied that the tenant was given a proper opportunity to respond to the landlord's attempt to increase the requested amount of his claim received four days before this hearing. However, as outlined below, I have taken into account each of the items listed in the landlord's monetary order worksheet in considering his entitlement to a monetary award of the \$3,715.36 identified in his original application.

#### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

At the hearing, the tenant did not dispute the landlord's assertion that \$625.00 in rent remains owing from this tenancy from June 2012. Consequently, I issue a monetary award in the landlord's favour in the amount of \$625.00 for unpaid rent for that month.

The landlord gave sworn testimony and written evidence that the tenant left some type of ink-producing device in the clothes dryer that the landlord and tenant shared on March 18, 2012. The landlord entered into written evidence a copy of a \$9.79 receipt for a liquid cleaning product that he used to remove this ink from the dryer the following day. The landlord also submitted an estimated claim for 4 hours of his labour at a rate of \$25.00 per hour. The tenant did not dispute the landlord's account of this incident,

but noted that it occurred on March 18, 2012, well in advance of the end of this tenancy. I allow the landlord a monetary award of \$45.00 for three hours of his time at a rate of \$15.00 per hour. I allow the landlord's claim for \$9.79 for the liquid cleaning product.

I have also considered the landlord's claim for labour and costs associated with the May 9, 2012 overflow of a toilet from the tenant's rental suite which damaged the floor, underlay, carpets, insulation and tiles. The landlord submitted an \$825.00 estimated claim for his labour to clean up the mess which leaked through the ceiling into his residence and to remove and replace the existing toilet with a new toilet. The landlord also submitted a series of receipts in his request for reimbursement for his costs in drying his floors and carpets, and in replacing plywood, and insulation associated with this flooding incident.

I allow the landlord a monetary award for the losses that he incurred for the following as I accept that these resulted from the toilet overflow for which the tenant is responsible:

Rental of Fans	\$98.50
Plywood Replacement	\$22.40
New Insulation & Floor Transfer Strips	\$64.37

In his claim, the landlord sought compensation for 33 hours of his time in dealing with the damage caused by the tenant at a rate of \$25.00 per hour for a total labour charge of \$825.00. Although the landlord is entitled to a monetary award for some of the time he devoted to dealing with the aftermath of the flooding incident of May 9, 2012, I do not find that he is entitled to a monetary award to compensate him for all of the labour costs he outlined in his claim. Some of the landlord's time was devoted to the landlord's purchase of a new toilet, removal of the old toilet and installation of the new toilet. His claim included repairs because "the new toilet lifted off the wax seal that is used to seal the toilet to the toilet down pipe causing any flushed matter to leak from the down pipe to the space between the floors and eventually into the basement." After the landlord's initial claim for 16 hours of labour from May 9, 2012 until May 12, 2012, the landlord also charged an additional 17 hours for his labour from May 21 until May 23, 2012.

I find that the tenant should not be held responsible for additional expenses incurred by the landlord that resulted from the landlord's decision to remove the old toilet and install the new one himself rather than to hire a licensed plumber. I find that the landlord is entitled to a monetary award for only those hours that would reasonably be attributed to the clean-up and repair of actual damage caused by the flooding incident of May 9, 2012. The tenant is not responsible for the landlord's subsequent decision to replace the old toilet with a new one, or the problems associated with the installation of a new toilet. I realize that it is difficult to separate those hours reasonably attributable to the

flooding damage to those involved in the replacement of the toilet and any reasonable wear and tear that would be expected to replace a toilet whose useful life may have ended. I find that the landlord is entitled to a monetary award for 11 hours of his time, one-third of the hours claimed by the landlord, at a rate of \$15.00 per hour. This results in a monetary award of \$165.00 for the labour that the landlord devoted to dealing with the toilet overflow problem of early May 2012.

The parties did not agree as to the condition of the carpets at the end of this tenancy and whether the landlord was entitled to reimbursement in the amount of \$247.52 for professional carpet cleaning. The landlord testified that this carpet cleaning was necessary. He entered into evidence copies of the joint move-in report and his move-out condition inspection reports as well as photographs demonstrating the condition of the carpets and stains on the carpets at the end of this tenancy. The landlord did not have any specific term in this residential tenancy agreement requiring that the tenant have the carpets professionally steam cleaned at the end of his tenancy. The landlord could not identify any specific provision of the *Act* to support his claim that the *Act* requires a tenant to professionally steam clean carpets at the end of a tenancy. Although the tenant testified that he rented a carpet cleaner and cleaned the carpets at the end of his tenancy, he did not enter into evidence a copy of his receipt for this rental.

Based on a balance of probabilities, I find that the landlord has provided sufficient evidence to demonstrate that the tenant has not satisfied his responsibility to comply with the requirement under section 37(2) of the *Act* that he leave the premises (including the carpets) reasonably clean and undamaged at the end of his tenancy. While there was no specific requirement that the tenant had to have the carpets professionally steam cleaned, I find that the landlord is entitled to recover most of his carpet cleaning expenses at the end of this tenancy. I allow a monetary award in the landlord's favour in the amount of \$185.64, which compensates him for  $\frac{3}{4}$  of the expenses that he incurred from a professional carpet cleaning company.

The tenant did not dispute the landlord's claim that one of the stove elements needed replacement at the end of this tenancy. However, he questioned whether he should be held responsible for this expense, which he described as resulting from normal wear and tear. As the landlord did not claim that the replacement of this stove element resulted from any negligence on the tenant's part, I find that the landlord's replacement of this item falls into the category of normal wear and tear that can be expected as appliances age. I dismiss the landlord's application for reimbursement for his \$149.64 expense to replace a stove element without leave to reapply.

The tenant did not dispute the landlord's claim for reimbursement of a tilter for the blinds. I allow the landlord's application for a monetary award of \$15.34 for the cost he incurred to replace this part of the living room blinds in this rental unit.

I dismiss without leave to reapply the landlord's claim for the recovery of his expenses to obtain a new front door deadbolt and to obtain two spare keys. These expenses are ones that a landlord is expected to be responsible for at the end of any tenancy. For similar reasons, I also dismiss the landlord's application to recover his photo printing costs and his registered mail costs from the tenant without leave to reapply. I do allow the landlord to recover his \$50.00 filing fee for his application from the tenant, the only cost of preparing for this hearing which he is entitled to recover under the *Act*.

Although the parties disagreed as to the level of cleanliness of the rental unit at the end of this tenancy, I find on a balance of probabilities that the landlord is entitled to a monetary award of \$150.00 to reimburse him for cleaning that he obtained from a cleaning service. I do so as I find sufficient evidence from the move-out condition inspection report and the landlord's photographs that the tenant did not comply with the requirement under section 37(2) of the *Act* to leave the rental unit reasonably clean at the end of this tenancy.

I have also considered the landlord's claim for a monetary award of the \$1,568.00 estimated cost of repairing damage to and painting the walls in this rental unit. Although the landlord testified that he has not actually incurred any costs in repainting the walls, he testified that he has repaired the holes in the walls created during this tenancy. The lack of re-painting of the walls has apparently not resulted in a significant decline in the landlord's ability to re-rent the premises to another tenant. The landlord testified that a new tenant took possession of the rental unit on July 15, 2012, for a monthly rent of \$1,400.00, only slightly less than what the respondent was paying. While the landlord did not provide specific receipts with respect to his repairs of the damage to the walls, I accept that he has incurred some costs in repairing holes in the walls caused during this tenancy and damage that occurred to various items in the rental unit. I allow the landlord a monetary award of \$180.00 to repair these items, an amount designed to enable him to recover 1 ½ days of his time (i.e., 12 hours) at a rate of \$15.00 per hour.

I allow the landlord's claim of \$28.51 in supplies he purchased from Home Depot that were associated with his repairs of the rental unit.

At the hearing, the landlord provided an undisputed and detailed review of two receipts from Home Depot that he entered into written evidence in support of his claim for \$454.30 in expenses that he incurred for various supplies and items on July 5, 2012. These items included the replacement of three bathroom towel bars, many light bulbs, a

battery for the smoke alarm, damaged heat register covers and insulation. In considering this part of the landlord's application, I find that the only portion of the landlord's claim that he could not properly describe was a bill for \$50.99 plus HST (for a total of \$57.11). Consequently, I find that the landlord had demonstrated his entitlement to a monetary amount of \$403.31 ( $\$454.30 - \$57.11 = \$403.31$ ), an amount which allows all of this portion of the landlord's claim less the \$57.11 that he could not adequately describe at the hearing.

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

### Conclusion

I issue a monetary Order in the landlord's favour under the following terms which allows the landlord to recover unpaid rent, his filing fee and damages arising out of this tenancy and to retain the tenant's security deposit:

<b>Item</b>	<b>Amount</b>
Unpaid June 2012 Rent	\$625.00
Labour to Remove Ink from Dryer	45.00
Liquid Cleaning Product to Remove Ink from Dryer	9.79
Rental of Fans	\$98.50
Plywood Replacement	\$22.40
New Insulation & Floor Transfer Strips	\$64.37
Landlord's Labour to Address Toilet Overflow (11 hours @ \$15.00 = \$165.00)	165.00
Reimbursement of a portion of Landlord's Carpet Cleaning Expenses	185.64
Blind Repairs	15.34
Cleaning Services	150.00
Landlord's Labour for Repairs of Damage	180.00
Supplies for Repairs	28.51
Supplies and Items Purchased for Replacement of Items Damaged or Missing	403.31
Less Security Deposit	-675.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$1,367.86</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 01, 2012

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Residential Tenancy Branch