



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND MNR MNSD MNDC FF

### Preliminary Issues

At the outset of the hearing the Tenant confirmed receipt of evidence from the Landlord. However, she indicated that the only documents she received were copies of the hearing documents and the strata corporation letters and fines. She did not receive a copy of the tenancy agreement, a note signed by her daughter acknowledging receipt of \$150.00 for cleaning, or photographs.

The Landlord submitted that he gave each tenant the same evidence he gave the Residential Tenancy Branch.

The Landlord confirmed receipt of the Tenant's evidence however he claims he received it only three days ago, by registered mail.

The Tenant was not able to provide the tracking information or date the evidence was sent. She did submit that it was sent the same day the evidence was sent to the Residential Tenancy Branch which was approximately September 13, 2012.

After careful consideration of the aforementioned, I accept the affirmed testimony of both parties that each were sent the same evidence as the Residential Tenancy Branch, within the stipulated time frames outlined in the *Residential Tenancy Branch Rules of Procedures*. Accordingly, I will consider all evidence in my decision, in accordance with the *Residential Tenancy Branch Rules of Procedure # 11.5*.

### 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 the security and pet deposits, 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 Tenants for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations

for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. 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. Should the Landlord be granted a Monetary Order?

#### Background and Evidence

The parties agreed they entered into a fixed term tenancy agreement that began on January 1, 2012 and was set to end June 30, 2012. Rent was payable on the first of each month in the amount of \$950.00 and on December 15, 2011 the Tenants paid \$475.00 as the security deposit and \$475.00 as the pet deposit. No condition inspection report forms were completed at the beginning or at the end of this tenancy. The Landlord did not issue a final notice of inspection.

The Landlord is seeking monetary compensation as follows:

- \$950.00 for Strata Fines as supported by the copies of fines issued by the Strata Corp and provided in evidence
- \$950.00 for June 2012 rent as the Tenant's cheque was returned and a copy was provided in evidence
- \$150.00 for cleaning the rental unit as it was left dirty
- \$134.40 for fixing doors which were broken
- \$60.00 for removal of debris left in the unit and in the fridge
- \$100.00 for carpet cleaning
- \$200.00 which is comprised of the \$100.00 move in fee and the \$100.00 move out fee

The Tenant submitted that she accepts responsibility for the following three items totalling \$2,100.00:

- \$950.00 for Strata Fines as supported by the evidence
- \$950.00 for June 2012 rent
- \$200.00 which is comprised of the \$100.00 move in fee and the \$100.00 move out fee.

She was told these items were paid by her daughter, however she does not have proof that they were.

The Tenant disputed the rest of the items being claimed. She said the two doors simply fell off during the tenancy because they were damaged by previous tenants and the Landlord simply glued them together which was not a proper repair.

The Tenant argued that the Landlord attended the rental unit on June 30, 2012 and told her daughter not to clean because he had hired someone to clean the unit after it was painted and new carpet was going to be installed. She agreed that some stuff was left behind but that it would have easily fit into a small garbage bag. She disagrees with paying for carpet cleaning when the carpet was replaced.

In closing the Landlord confirmed he had the rental unit cleaned, painted, and new carpet installed. He did not submit receipts as proof that any of the work was performed but argued that he had hired a lady to do the cleaning which took over two days to complete.

### Analysis

When a landlord makes a claim for damage or loss the burden of proof lies with the landlord to establish their claim. To prove a loss the applicant must satisfy the following four 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 other party in violation of the Act, Regulation or tenancy 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 Tenant has accepted responsibility for **\$2,100.00** which includes the strata fines of \$950.00, June 2012 rent of \$950.00, and the \$200.00 move in and move out fees.

When considering the rest of the Landlord's claim I find that, in the absence of a move in or move out condition inspection report form or receipts proving the work was performed, there is insufficient evidence to support the claim for cleaning, repairs,

removal of debris, or carpet cleaning. Therefore these claims are dismissed, without leave to reapply.

The Landlord has primarily been successful with his application. Therefore, I award recovery of the **\$50.00** filing fee.

**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:

Strata Fees	\$ 950.00
Unpaid Rent for June 2012	950.00
Strata move in and move out fee (2 x \$100.00)	200.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$2,150.00</b>
<b>LESS:</b> Pet Deposit \$475.00 + Interest \$0.00	- 475.00
Security Deposit \$475.00 + Interest \$0.00	<u>-475.00</u>
<b>Offset amount due to the LANDLORD</b>	<b><u>\$1,200.00</u></b>

### Conclusion

The Landlord has been awarded a Monetary Order of **\$1,200.00**. This Order is legally binding and must be served upon the Tenants.

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: September 24, 2012.

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Residential Tenancy Branch