



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Code MNR, MND, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, and for damages to the unit.

The landlord's agent appeared gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered.

The *Residential Tenancy Branch Rules of Procedure* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on October 23, 2012, a Canada post tracking number was provided as evidence of service, the tenant did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?  
Is the landlord entitled to monetary compensation for damages?

### Background and Evidence

The tenancy began on March 1, 2009. Rent in the amount of \$419.00 was payable on the first of each month. A security deposit was not required under the BC Housing agreement. The tenancy ended on July 4, 2011.

The landlord claims as follows:

a.	Loss of rent for June, July and August 2011	\$1,257.00
b.	Compensation for damages to the unit	\$ 649.00
c.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$1,956.00</b>

The landlord's agent testified the tenant did not pay rent for June and July 2011. The landlord's agent stated on June 17, 2011, the tenant signed the rent arrears agreement. The landlord seeks to recover unpaid rent in the amount of \$838.00. Filed in evidence is a copy of the rent arrears agreement.

The landlord's agent testified on July 4, 2011, the tenant came to the landlord's office and informed the office that she was moving from the rental unit immediately. The landlord's agent stated as a result of the tenant not providing proper notice to end the rental unit they were unable to rent the unit for August 2011. The landlord seeks to recover unpaid rent in the amount of \$419.00.

The landlord's agent testified when the tenant attended on July 4, 2011, she said her mother and sister would be attending the rental unit later in the week to the clean. The landlord's agent stated no one ever attended the unit on the tenant's behalf to clean.

The landlord's agent testified the tenant did not do any cleaning and it took fifteen hours to clean the unit, however, they are only seeking to recover the cost of eight hours. The landlord seeks to recover the cost of cleaning in the amount of \$296.00. Filed in evidence are photographs of the condition the rental unit was left in by the tenant.

The landlord's agent testified the tenant did not clean the carpets as required and they were heavily stained. The landlord seeks to recover the cost of cleaning the carpets in the amount of \$201.60. Filed in evidence is the carpet cleaning invoice.

The landlord's agent testified the tenant damaged the bifold entry door, by breaking a panel at the top and the track to the door required to be repaired. The landlord's agent stated they are not seeking to recover the cost of replacing the bifold door, however seek compensation for labour cost. The landlord seeks to recover labour cost for the repair in the amount of \$30.00. Filed in evidence is a photograph of the broken bifold door. Filed in evidence is an invoice for labour.

The landlord's agent testified the tenant left a large amount of garbage in the rental unit, which was not normal household waste. The landlord's agent stated they are seeking to recover the cost of disposal fees. The landlord seeks to recover disposal fees in the amount of \$21.40. Filed in evidence are photographs of the unit. Filed in evidence is a receipt from the landfill site.

The landlord's agent testified the tenant left a large hole in the drywall, which is not normal wear and tear. The landlord seeks to recover the cost to repair the drywall in the amount of \$65.00. Filed in evidence are photographs of the damaged drywall.

The landlord's agent testified that earlier in the year the tenants made a request to change the locks as she alleged her purse was stolen. The landlord's agent stated the tenant was aware she was responsible for the cost. The landlord seeks to recover the cost of having the locks changed in the amount of \$35.00.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 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 landlord has the burden of proof to prove a violation of the Act by the tenant and a corresponding loss.

Section 26 of the Residential Tenancy Act states:

**26** (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The evidence of the landlord's agent was the tenant did not pay rent owed for June and July 2011. The rent arrears agreement filed in evidence support the landlords claim. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to compensation for unpaid rent for June and July 2011, in the amount of **\$838.00**.

Section 45 of the Residential Tenancy Act states:

*45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*  
*(a) is not earlier than one month after the date the landlord receives the notice, and*  
*(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement*

In this case, The evidence of the landlord's agent was the tenant did not give any prior notice to end tenancy and move out of the unit on July 4, 2011. Under section 45 of the *Act* the tenant was required to provide the landlord with at least one month notice to end the tenancy. I find that the tenant has breached section 45 of the *Act* as the earliest date they could have legally ended the tenancy was August 31, 2011.

As a result of the tenant not complying with the terms of the tenancy agreement or the *Act* the landlord suffered a loss of rent for August 2011, and the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement or *Act*. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy. Therefore, the landlord is entitled to compensation for unpaid rent for August 2011, in the amount of **\$419.00**.

Section 37 of the Residential Tenancy Act states:

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Under section 37 of the *Act*, the tenant is required to return the rental unit to the landlords reasonably clean and undamaged, except for reasonable wear and tear.

Under Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the *Act*, the tenant is generally expected to clean the carpets if vacating after a tenancy of one year.

In this case, the evidence of the landlord's agent was the tenant did not clean the rental unit at the end of the tenancy. The photographs submitted into evidence supports the landlord's claim. I find the tenant has breach 37 of the *Act*, when they failed to leave the rental unit reasonable cleaned, failed to remove their garbage and when they failed to clean the carpets. Therefore, I find the landlord is entitled to compensation for cleaning costs in the amount of **\$519.00**.

In this case, the evidence of the landlord's agent was the tenant broke a bifold door and the tenant left a large hole in the drywall. The photographs submitted into evidence

supports the landlords claim that the damage caused was not normal wear and tear. I find the tenant breached section 37 of the Act, when they failed to leave the unit undamaged. Therefore, I find the landlord is entitled to compensation for damages to the unit in the amount of **\$95.00**.

The evidence of the landlord's agent was the tenant was required to compensate them for a change of lock request made by the tenant when she allege her purse was stolen, and the tenant was aware she was responsible for the cost. The documentary evidence submitted into evidence supports the landlord's claim. Therefore, I find the landlord is entitled to recover the cost of changing the lock, in the amount of **\$35.00**.

I find that the landlord has established a total monetary claim of **\$1,956.00** comprised of the above described amounts and the \$50.00 fee paid for this application. I grant the landlord an order under section 67 for the above amount due. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The landlord is granted a monetary order.

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: January 22, 2013

---

Residential Tenancy Branch

