



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MND, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit and an order to retain the security deposit and pet damage deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

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

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on November 1, 2009. Rent in the amount of \$1,395.00 was payable on the first of each month. A security deposit of \$675.00 and a pet damage deposit of \$675.00 were paid by the tenant. The tenancy ended on December 9, 2012.

The landlord claims as follows:

a.	Unpaid rent for December 2012	\$ 1,395.00
b.	Past rent owed	\$ 1,600.00
c.	Cleaning, and repairs to unit	\$ 2,467.50
d.	Unreturned keys and fob	\$ 150.00

e.	Replace soiled rug	\$ 134.40
f.	Replace damaged curtain rod	\$ 26.86
g.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$ 5,873.76</b>

#### Unpaid rent for December 2012

The parties agreed the tenant vacated the unit in December 2012, without paying rent.

#### Past rent owed

The landlord testified from July 2011 to November 2012, the tenant's rent was short by \$100.00 per month, with the exception of December 2011, rent as it was paid in full. The landlord stated the agreement with the tenant was that these shortfalls would accumulate as arrears and when the tenant's investment fund matured, this would be paid in full. Filed in evidence is a copy of the investment fund and copies of the interact e-transfers, for rent payments.

The tenant testified that the landlord did not allow her to reduce her rent, the tenant stated she paid what she could and if the landlord did not agree with the amount she could have evicted her. The tenant acknowledged the rent she was responsible to pay was the amount of \$1,395.00 and that she only paid the amount of \$1,300.00 for a period of 17 months.

#### Cleaning, and repairs to unit

The landlord testified that the tenant left the rental unit without cleaning and she was required to remove and dispose of 5 big bags of garbage and 10 big bags of bottles. The landlord stated the tenant also left items behind, such as a barbeque, planter boxes, dog beds, table top and miscellaneous smaller items. Filed in evidence are photographs.

The landlord testified that the tenant did not make any attempt to clean the unit. The landlord stated she was required to clean all the appliances. The landlord stated the refrigerator still contained food that had to be removed and the inside and outside had to thoroughly clean. The landlord stated the stove was extremely dirty and had to be sprayed with oven cleaner three times and after each spray it had to be scrubbed. Filed in evidence are photographs of the appliances.

The landlord testified that she had to clean all the kitchen cupboards, vacuum all the floors, mop all the floors, and wash all the walls. Filed in evidence are photographs

The landlord testified that the unit had an overwhelming smell of dog urine and feces and it was extremely difficult to remove and the unit had to be washed several times with special pet odor/stain remover to remove the smell.

The landlord testified that the tenant had used screws to hang pictures on the walls, and she was required to fix the walls. Filed in evidence are photographs of the walls.

The landlord testified that it took her 70.5 hours to clean the unit and make repairs and seeks to be compensated at the rate of \$35.00 per hour. The landlord seeks to recover the amount of \$2,467.50.

The tenant testified that she acknowledged she did not clean the rental unit, however, does not agreed with the amount of garbage bags left behind. The tenant agreed she left items behind, such as a barbeque, planter boxes, and a table top.

The tenant testified that she acknowledged that the rental unit smelled strongly of dog, as she had two huskies in a 550 square foot unit. The tenant denies the smell was from dog urine or feces.

The tenant testified that there were only two screws used on the walls, as they held a heavy picture.

The tenant disputes that it would take 70.5 hours to clean the unit.

#### Unreturned keys and fob

The landlord testified that the tenant did not return all the keys that were provided to the tenant. The landlord stated one building entrance key was missing and the cost of replacing the key was \$50.00. The landlord stated a fob to the garage was missing and the replacement cost was \$100.00. The landlord stated also one front door key and two storage unit keys were not returned. The landlord is seeking to recover the amount of \$150.00.

The tenant testified that she returned all the keys she had in her possession to the landlord. The tenant stated she was only provided with one key to the building entrance and with one fob to the garage, which both of these were items were returned. The tenant stated during the tenancy she was issued second keys for the main entrance, the mail box and a second fob because the first ones were lost and she had to pay the landlord the cost of replacing those keys.

The tenant agreed that only one key to the rental unit was returned and no keys to the storage room were returned.

#### Replace soiled rug

The landlord testified that the rug she provided to the tenant was stained with dog urine and feces. The landlord stated she tried to steam clean the rug, however, the stains would not come out. The landlord stated the rug was three years old and was required

to be replaced. The landlord seeks to recover the amount of \$134.40. Filed in evidence is a photograph of the rug and a receipt for replacing the rug.

The tenant acknowledged the landlord provided her with a rug at the start of the tenancy, which was in good condition.

#### Replace damaged curtain rod

The landlord testified the tenant damaged the curtain rod as it was bent in the middle and was required to be replaced. The landlord seeks to recover the amount of \$26.86. Filed in evidence is a copy of the receipt.

The tenant acknowledged that the curtain rod was damaged by hanging something that was too heavy on the curtain rod.

#### 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.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

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.*

Unpaid rent for December 2012

The parties agreed the tenant vacated the unit in December 2012, without paying the rent that was due under the terms of the tenancy agreement. I find the tenant has breached section 26 of the Act when they failed to pay rent and this has caused losses to the landlord. Therefore, the landlord is entitled to recover unpaid rent for December 2012, in the amount of **\$1,395.00**.

Past rent owed

In this case, I accept the evidence of the tenant that she did not have permission by the landlord to reduce rent. As a result, of that admission, I find the landlord is entitled to recover the rent arrears. Rent was short \$95.00 for 17 months, which totals \$1,615.00. In the landlord's application the amount claim was \$1,600.00. Therefore, the landlord is entitled to compensation in the amount of **\$1,600.00**.

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.*

Cleaning, and repairs to unit

In the case, the testimony of both parties and the photographic evidence supports that the tenant did not clean the rental unit or fill the screw holes as required by the Act. I find the tenant has breach section 37 of the Act, when she failed to leave the unit reasonably cleaned and undamaged and this has caused losses to the landlord.

The photographs support that the unit required substantial cleaning to bring the unit to a reasonable standard of cleanliness. The photographs also support the tenant used several screws to hang picture, causing minor damage to the walls. However, while the landlord did suffer a loss, I find that the amount of 70.5 hours to be exceptionally high for a unit that is 550 square feet, even with a strong animal odour and minor wall repairs.

Also I find the hourly rate of \$35.00 is exceptionally high for the landlord to claim for personally cleaning the unit. When a profession company is hired, they are paying taxes, wages and other mandatory compensation, such as employment insurance.

In this circumstance, it may have been reasonable for the landlord to hire a professional cleaning company who specialize in the area of strong animal's smells, and by doing so the hours of work may have been significantly reduced and the cost significantly lower.

As I have found previously that the amount of 70.5 hours to be exceptionally high based on the square footage of the unit and the photographs provided, with no supporting

documents, such as an estimate to support that the amount of 70.5 hours was reasonable for cleaning and repairing the unit. I find the landlord that the landlord is only entitled to a portion claimed (35 hours) for cleaning and repairing the unit.

As I have found previously that the rate of \$35.00 per hour for cleaning and repairing to be exceptionally high. I find that the landlord is only entitled to be paid at the rate of \$15.00 per hour.

Therefore, the landlord is entitled to compensation for cleaning and repairs in the amount of **\$525.00**.

#### Unreturned keys and fob

In this case, the move-in inspection indicated the tenant was provided with one key to the building entrance, one fob and one mail box key. The evidence of the tenant was that the keys were lost during the tenancy and she paid to have them replaced and that is why the report indicates a second key was issued.

As a result, I accept the tenant's evidence that she returned all the keys for the building entrance, parking remote control and the mail box's keys that were provided by the landlord.

However, the evidence support that one key for the rental unit and two storage keys were missing at the end of the tenancy. As a result, of the tenant not returning these keys, I find the tenant has breached the Act and the landlord suffered a loss. However, the landlord has not provided a receipt for these keys and as a result, I will allow a nominal amount for the replacement cost of the keys in the amount of **\$15.00**.

#### Replace soiled rug

The parties agreed the tenant was provided a rug at the start of the tenancy and that the rug was in good condition. The evidence of the landlord was the stains would not come out of the rug after it was steam cleaned and the rug was required to be replaced.

Under the Residential Policy Guideline #40, if an item was damaged by the tenant, the age of the item at the time of replacement and the useful life of the item may be considered when calculating the tenant's responsibility for the cost of replacement.

Policy Guideline #40 states the useful life of a carpet is ten years. In this case the carpet was three years old. The evidence of the landlord was it cost \$134.40 to replace the carpet. As the carpet was three years old, the landlord is entitled to the depreciated value of seventy percent. Therefore, I find the landlord is entitled to compensation for the cost of replacing the carpet in the amount of **\$94.08**.

Replace damaged curtain rod

In this case, the curtain rod was damaged by the tenant and was replaced by the landlord. As the landlord did not provide any testimony as to the age of the item at the time of replacement and the useful life of the item is taken into considered when providing compensation, I find that the landlord has provided insufficient for the actual amount for compensation. However, the tenant has breached the Act, when they failed to fix the damaged curtain rod. Therefore, I will grant the landlord a nominal amount for the curtain rod in the amount of **\$15.00**.

As the landlord was not fully successful with the claim, and the landlord paid \$100.00 to file the application, I grant the landlord a portion of the filing fee in the amount of **\$50.00**.

I find that the landlord has established a total monetary claim of **\$3,694.08** comprised of the above described amounts.

I order that the landlord retain the security deposit of \$675.00 and pet damage deposit of \$675.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$2,344.08**.

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 and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: March 21, 2013

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Residential Tenancy Branch

