



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the tenant: MNSD, FF  
For the landlords: MND, FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for a return of her security deposit, doubled, and for recovery of the filing fee.

The landlords applied for a monetary order for damage to the rental unit and for recovery of the filing fee.

The tenant did not appear at the telephone conference call hearing, despite having her own application for dispute resolution set for this date and time.

The landlords gave evidence that they served the tenant with their Application for Dispute Resolution and Notice of Hearing by registered mail on January 28, 2013, to the forwarding address provided by the tenant in writing. The landlords supplied the receipt and customer receipt showing the tracking number of the registered mail.

I find the tenant was served notice of the hearing for the landlords' application for dispute resolution in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlords were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary issue*-As the tenant failed to appear at the hearing set for her application for dispute resolution and support her application, I dismiss the tenant's application, without leave to reapply.

### Issue(s) to be Decided

Are the landlords entitled to a monetary order and to recover the filing fee?

### Background and Evidence

The landlord said that this tenancy began in August 2011, ended on November 1, 2012, when the tenant vacated the rental unit, and monthly rent was \$800.00, increased to \$1050.00 when the tenant began renting pasture land from the landlords.

The landlord said that the tenant did not pay a security deposit.

The landlord's monetary claim is \$864.50, listed in their application. In evidence the landlord submitted a claim for cleaning the rental unit in the amount of \$320.00, damage to the rental unit for \$120.00, a missing free standing toilet paper holder for \$34.50, landfill fees of \$60.00, propane gas for \$33.00 and another propane charge of \$343.04. I note that these amounts do not equal the monetary claim listed in the application.

The landlord confirmed that their relevant evidence was 18 photographs.

The landlord said that the tenant vacated the rental unit, leaving it in need of cleaning and requiring hauling away garbage and debris.

The landlord submitted that the tenant owed for a propane gas refill.

The landlord confirmed that there was no a condition inspection report, either at the move-in or move-out, and that they had received the tenant's written forwarding address prior to the tenancy ending.

### Analysis

Based on the relevant oral and written 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 claiming party, the landlords in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant 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 the absence of any other evidence, such as the condition inspection reports or photographs prior to the tenancy, I do not accept the landlord's claim for damages to the rental unit. The landlord has the burden of proof on the balance of probabilities and I find the landlords' evidence, or rather lack of compelling evidence, does not meet the burden of proof necessary to show that the tenant damaged the rental unit.

I also find the landlords submitted insufficient evidence to prove they sustained a loss, such as with receipts, invoices, or payments made. I therefore find that the landlord has failed prove that they suffered a loss or damage or to verify the amount of any alleged loss.

### Conclusion

The tenant's application is dismissed due to her absence, without leave to reapply.

Due to the above, I find the landlords have submitted insufficient evidence to support their application, and I therefore dismiss their application, without leave to reapply.

As I have dismissed the landlords' application, I also dismiss their request to recover the filing fee.

I have not addressed the matter of the tenant's security deposit, as the landlords claimed not to have received one from the tenant, and the tenant failed to appear to rebut this evidence.

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* and is being mailed to both the applicant and the respondent.

Dated: March 05, 2013

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Residential Tenancy Branch

