



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord: MND MNSD MNDC FF

For the tenant: MNDC 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 landlord applied for a monetary order for damage to the unit, site or property, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The tenant applied for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The hearing commenced on March 25, 2013 at 11:00 a.m. The landlord attended the hearing. The tenant did not attend the hearing. As the tenant did not attend the hearing, the tenant’s application was **dismissed without leave to reapply** after the 10 minute waiting period had elapsed. The hearing continued with consideration of the landlord’s application.

On March 25, 2013, after the tenant’s application was dismissed in full, the hearing was adjourned to permit the landlord to serve his evidence on the tenant, to an incomplete address provided by the tenant. An interim decision was mailed to the parties reflecting this information. The reconvened hearing was scheduled for April 24, 2013, however, due to an illness, the reconvened hearing was rescheduled to April 29, 2013 at 2:30 p.m. On April 29, 2013, the hearing reconvened and both the landlord and the tenant appeared, in addition to the tenant’s mother as a support. On April 29, 2013 the tenant was advised that his application had already been dismissed as per the Interim Decision dated March 25, 2013.

The tenant confirmed receiving the evidence from the landlord prior to the hearing and that he had the opportunity to review the evidence prior to the hearing. The tenant stated that he did not submit any evidence in response to the landlord's application.

### Preliminary Matter

During the hearing, the landlord requested to reduce his monetary claim from \$6,644.44 to \$6,419.43 by confirming that the general cleaning claim of \$425.00 was actually \$179.99. As a result, the landlord's request to amend his claim was granted as a reduction in the landlord's monetary claim does not prejudice the tenant.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

### Background and Evidence

A month to month tenancy began on June 1, 2012. Monthly rent in the amount of \$850.00 was due on the first day of each month. The tenant paid a security deposit of \$425.00 at the start of the tenancy. The landlord requested and accepted the first and last month's rent in the amount of \$850.00 for both the first and last month's rent at the start of the tenancy. The landlord continues to hold the tenant's security deposit of \$425.00 and the last month's rent of \$850.00 which will be addressed later in this decision.

The tenant vacated the rental unit on December 27, 2012. A copy of the condition inspection report was submitted in evidence. According to the condition inspection report, the move-in condition inspection was completed on May 31, 2012 and the move-out condition inspection was completed on December 29, 2012. The tenant confirmed that he attended the move-out condition inspection on December 29, 2012 and agreed to surrender his \$425.00 security deposit as he did not clean the rental unit, however the tenant stated that he did not agree to have the landlord retain his last month's rent in the amount of \$850.00 and did not sign the move-out condition inspection report as he did not agree with it.

The landlord's amended monetary claim of \$6,419.43 is comprised of the following:

|        |   |                   |
|--------|---|-------------------|
| Item 1 | Cost to change locks  | \$104.44          |
| Item 2 | Repair of mold and water damage   | \$4,435.00        |
| Item 3 | General cleaning  | \$179.99          |
| Item 4 | Loss of January 2013 rent due to tenant failing to provide proper notice under the <i>Act</i>     | \$850.00          |
| Item 5 | Loss of February 2013 rent due to inability to re-rent rental unit due to damage caused by tenant | \$850.00          |
|        | <b>TOTAL</b>  | <b>\$6,419.43</b> |

Item 1

The landlord is claiming for \$104.44 to change the locks to the rental unit due to the tenant failing to return the rental unit keys to the landlord. The tenant confirmed during the hearing that he did not return the rental unit keys to the landlord as the landlord did not return his last month's rent in the amount of \$850.00. To date, the tenant has not returned the rental unit keys. The landlord submitted a receipt for \$104.44 for hardware and new keys for the lock and clarified that he provided the labour to change the lock himself so was not charging the tenant for his labour costs.

Item 2

The landlord is claiming \$4,435.00 for damage to the rental unit caused by water and mold. The landlord submitted the condition inspection report, three repair quotes, and 31 labelled color photos, which the landlord indicated show the condition of the rental unit before the tenant moved in, and the condition of the rental unit at the end of the tenancy. The tenant did not dispute the color photos and confirmed that the photos were accurate as to the condition of the rental unit.

The landlord testified that the home is a fifty years old, and had an unfinished basement prior to spending \$30,000.00 to renovate the basement in the spring of 2012, which included a new rental unit. The landlord stated that the tenant was the first tenant to rent the rental unit. The tenant stated that he was not aware that he was the first tenant to rent the rental unit.

The tenant testified that on December 27, 2012 there was no visible mold or problems with the rental unit other than the rental unit needing cleaning, which is why he surrendered his \$425.00 security deposit to the landlord, to cover cleaning costs. The tenant stated that when he returned to the rental unit on December 29, 2012, the rental

unit looked like it did in the photos. The tenant denies that on December 27, 2012, two days earlier, that rental unit looked like the condition shown in the photos. The photos appear to show water damage and mold in several areas of the rental unit. The tenant also denied that he left the water running or that he permitted a guest to leave the water running prior to vacating the rental unit.

The landlord stated that he had not seen water leaking in the basement at any time prior to the tenant moving into the rental unit in June 2012 and that all new materials were used to finish the basement which included the rental unit so mold coming from inside the walls was not possible as there was no leaks during the tenancy. The tenant denied seeing any water leaks during the tenancy.

The tenant testified that the mold must have been behind the walls during the tenancy and that he only noticed the damage/mold on December 29, 2013. The tenant disputed that the quotes provided to repair the damage to the rental unit prove that he damaged the rental unit. Three repair quotes were submitted in evidence.

The first quote to repair the damage to the rental unit was from a disaster cleanup company in the amount of \$4,464.02 and describes the work required in the bathroom, living room and kitchen. The second quote was from a restoration company in the amount of \$3,900.00 plus HST at 12% and refers to significant mold in the walls of the bathroom. The second quote indicates that work is required in the bathroom, living room and kitchen. The third quote also refers to mold and is from a company that indicates that it will take approximately five days to complete the work as "chasing mold is a very difficult project". The third quote refers to taking samples including air samples regarding the mold and that there "is clear and visible mold damage..." and estimates the repairs to be \$4,000.00 plus HST at 12%.

The photo labelled "Living Room #1" shows water damage to the trim, baseboards and drywall outside of the bathroom, in the living room area of the rental unit. Photo "Living Room #2" is a close-up photo of the same area showing clear water damage to the baseboard, trim and drywall. Photo "Living Room #4" is a further close-up photo which clearly shows the damage to the same areas as photos "Living Room #1" and "Living Room #2". The photo "Living Room #6" shows the baseboard being removed and a portion of the drywall removed to expose further damage that extends to the drywall inside the bathroom.

Item 3

The landlord is claiming \$179.99 for general suite cleaning. The tenant did not dispute that the rental unit required cleaning as the tenant confirmed during the hearing that he did not clean the rental unit before vacating. The photo evidence submitted by the landlord supports that at the end of the tenancy, the rental unit was not cleaned by the tenant. The landlord also submitted in evidence a quote for general cleaning in the amount of \$179.99 which includes five hours of cleaning by a cleaning service.

Item 4

The landlord is claiming \$850.00 which relates to the loss of January 2013 rent as the tenant failed to provide proper notice to end the tenancy in accordance with the *Act*. The tenant testified that he vacated the rental unit due to noise from the landlord and his family. During the hearing, the tenant confirmed that he did not put his concerns in writing to the landlord advising of his noise complaint(s). The tenant stated that he thought he had a verbal agreement with the landlord's wife to end the tenancy; however the landlord disputed that any such agreement was made. The tenant confirmed that he did not receive anything in writing from the landlord indicating that there was a mutual agreement to end the tenancy. The tenant vacated the rental unit on December 27, 2012.

Item 5

The landlord is claiming \$850.00 which relates to the loss of February 2013 rent due to the damage to the rental unit, which the landlord alleges the tenant caused and that did not exist prior to the tenancy. The landlord submitted photos taken at the start of the tenancy and photos of the damage after the tenancy ended as described earlier in this decision. The landlord testified that he has been unable to re-rent the rental unit due to the damage that has yet to be repaired and is unable to afford to repair the damage until he receives compensation from the tenant.

Analysis

Based on the oral testimony of the parties and documentary evidence before me, and on the balance of probabilities, I find the following.

For ease of reference, I will respond to each of the items being claimed by their corresponding item number as described above.

**Item 1** – The landlord is claiming for \$104.44 to change the locks to the rental unit due to the tenant failing to return the rental unit keys to the landlord. The tenant confirmed during the hearing that he did not return the rental unit keys to the landlord as the landlord did not return his last month's rent in the amount of \$850.00. To date, the tenant has not returned the rental unit keys. The landlord submitted a receipt for \$104.44 for hardware and new keys for the lock and clarified that he provided the labour to change the lock himself so was not charging the tenant for his labour costs.

I find the tenant breached section 37 of the *Act* which states:

**Leaving the rental unit at the end of a tenancy**

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) **When a tenant vacates a rental unit, the tenant must**

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) **give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.**

I find that due to the tenant's breach of section 37 of the *Act* by failing to return the rental unit keys, the landlord suffered a loss to change the locks of the rental unit. I find the landlord has met the burden of proof for this portion of his claim. Therefore, **I grant** the landlord **\$104.44** for this portion of the landlord's claim.

**Item 2** - The landlord is claiming \$4,435.00 for damage to the rental unit caused by water and mold. The landlord submitted the condition inspection report, three repair quotes, and 31 labelled color photos, which the landlord indicated show the condition of the rental unit before the tenant moved in, and the condition of the rental unit at the end of the tenancy. The tenant did not dispute the color photos and confirmed that the photos were accurate as to the condition of the rental unit.

The tenant testified that on December 27, 2012, there was no visible damage to the rental unit, and then just two days later, on December 29, 2012, the rental unit looked like it did in the photos submitted in evidence, as the tenant confirmed the photos were accurate. **I find** that the tenant's testimony is not credible as it is not reasonable that such damage would occur over the course of two days, where water damage and mold damage appear and are supported by colour photos. Furthermore, the tenant did not

state that there was any water leaks during the tenancy, so I find that the tenant provided no evidence to support his allegation that the mold must have been behind the walls during the tenancy. Therefore, I prefer the testimony of the landlord that the tenant damaged the rental unit during the tenancy, and that when the move-out condition inspection report was completed on December 29, 2013, the damage to the rental unit was discovered.

I find that the landlord provided three quotes and took an average of those three quotes to repair the damage to the rental unit. I also note that the tenant failed to submit any evidence in support of his position that he did not damage the rental unit, such as his own photos of the condition of the rental unit on December 27, 2013. As described above, section 37 of the *Act* requires that when the tenant vacates the rental unit, the tenant must leave the rental unit reasonably clean, and **undamaged except for reasonable wear and tear**. I find the tenant breached section 37 of the *Act* by failing to leave the rental unit undamaged, except for reasonable wear and tear. The damage in the photos provided show clear water damage and what appear to be mold damage and that the amount being claimed and supported by the three quotes provided of \$4,435.00 is reasonable given the damage to the rental unit. Therefore, I find the landlord has met the burden of proof and I **grant** the landlord **\$4,435.00** as compensation for the damage to the rental unit caused by the tenant during the tenancy.

**Item 3** - The landlord is claiming \$179.99 for general suite cleaning. The tenant did not dispute that the rental unit required cleaning as the tenant confirmed during the hearing that he did not clean the rental unit before vacating. As the tenant did not dispute this portion of the landlord's claim, I find the landlord has met the burden of proof and I **grant** the landlord **\$179.99** for general suite cleaning.

**Item 4** – The landlord is claiming \$850.00 which relates to the loss of January 2013 rent as the tenant failed to provide proper notice to end the tenancy in accordance with the *Act*. The tenant testified that he vacated the rental unit due to noise from the landlord and his family. During the hearing, the tenant confirmed that he did not put his concerns in writing to the landlord. The tenant stated that he thought he had a verbal agreement with the landlord's wife to end the tenancy; however the landlord disputed that any such agreement was made. The tenant confirmed that he did not receive anything in writing from the landlord indicating that there was a mutual agreement to end the tenancy. The tenant vacated the rental unit on December 27, 2012.

Section 45 of the *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.**

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[emphasis added]

Based on the above, **I find** the tenant breached section 45 by vacating the rental unit without providing proper notice under the *Act*. Therefore, **I find** the landlord has met the burden of proof and **I grant** the landlord **\$850.00** in compensation for unpaid rent for the month of January 2013.

**Item 5** - The landlord is claiming \$850.00 which relates to the loss of February 2013 rent due to the damage to the rental unit, which the landlord alleges the tenant caused and that did not exist prior to the tenancy. The landlord submitted photos taken at the start of the tenancy and photos of the damage after the tenancy ended as described earlier in this decision. The landlord testified that he has been unable to re-rent the rental unit due to the damage that has yet to be repaired.

The landlord testified that he has been unable to re-rent the rental unit, due to the extensive damage caused by the tenant and is awaiting compensation from the tenant to be able to afford to repair the rental unit. Further to my findings in item #2 described above where the tenant was found to have damaged the rental unit, **I find** the landlord has met the burden of proof for this item and **I grant** the landlord **\$850.00** for the loss of rent for the month of February 2013.

The tenant's security deposit of \$425.00 has accrued \$0.00 in interest since the start of the tenancy, which the landlords continue to hold.

As the landlord was successful with his application, **I grant** the landlord the recovery of the filing fee in the amount of **\$100.00**.



**I authorize** the landlord to retain the tenant's full security deposit of \$425.00 in partial satisfaction of the claim.

**I find** that the landlord has established a total monetary claim as follows:

|                        |   |                                  |
|------------------------|---|----------------------------------|
| Item 1                 | Cost to change locks  | \$104.44                         |
| Item 2                 | Repair of mold and water damage   | \$4,435.00                       |
| Item 3                 | General cleaning  | \$179.99                         |
| Item 4                 | Loss of January 2013 rent due to tenant failing to provide proper notice under the <i>Act</i>     | \$850.00                         |
| Item 5                 | Loss of February 2013 rent due to inability to re-rent rental unit due to damage caused by tenant | \$850.00                         |
| Filing Fee             | Cost of Filing fee to file for dispute resolution   | \$100.00                         |
|                        | <b>Subtotal</b>   | <b>\$6,519.43</b>                |
| <i>Tenant Credit 1</i> | <i>Credit of \$425.00 for tenant's full security deposit</i>                                      | <i>(Less credit of \$425.00)</i> |
| <i>Tenant Credit 2</i> | <i>Credit of \$850.00 for last month's rent which the landlord continues to hold</i>              | <i>(Less credit of \$850.00)</i> |
|                        | <b>TOTAL OWING TO LANDLORD</b>  | <b>\$5,244.43</b>                |

**I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing in the total amount of **\$5,244.43**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord is reminded that the *Act* does not provide for a landlord to request last month's rent in advance at the start of the tenancy.

### Conclusion

I find the landlord has established a total monetary claim of \$6,519.43. I authorize the landlord to retain the full security deposit of the tenant and I deduct \$850.00 from the landlord's claim of \$6,519.43 due to the landlord requesting the last month's rent in advance, which the landlord continues to hold. I grant the landlord a monetary order in the amount of \$5,244.43.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 10, 2013

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Residential Tenancy Branch