



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application for a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. Both parties appeared and had an opportunity to be heard.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order and, if so, in what amount?

### Background and Evidence

This month-to-month tenancy commenced February 15, 2011. The monthly rent of \$1550.00 was due on the first day of the month. The tenant paid a security deposit of \$750.00. A formal move-in inspection was not conducted nor was a move-in condition inspection report completed.

On August 1, 2012, the tenant says he put a note in the landlord's mailbox giving notice to end tenancy as of August 31, 2012. The landlord says the note, although dated August 1, was not put into the mailbox until August 3.

The tenant testified they moved out of the rental unit on or about August 23. They left the keys on the counter between the sink and stove and left the front door unlocked. They did not give the landlord any notice that they had left nor did they leave their forwarding address in writing.

The landlord testified that he went to the rental unit at 8:00 am on September 1. He found the door unlocked, a window missing, stuff on the front lawn, and a mess in the house but he did not find any keys. He waited until noon and then called a locksmith.

The tenant never did provide the landlord with his forwarding address in writing. The landlord testified that he had to look for the tenant before he could pursue his application for dispute resolution.

The landlord made the following claims:

*Broken bathroom mirror.* The landlord claimed \$17.92 for materials only. The tenant agreed to this claim.

*Replace stove element and receptacle.* The landlord claimed \$83.89 for parts only. The landlord testified that the stove was six months old at the start of this tenancy. The tenant testified that the stove never worked properly. When they complained the landlord checked the stove and told his wife that he would get it repaired, but he never did. The tenant also submitted a letter from a person who lived with the tenants at the start of the tenancy. This letter said that one burner on the stove did not work.

*Dryer drum.* The landlord testified that there was a black substance on the dryer drum that he could not remove. The dryer was five years old at the start of the tenancy. A replacement part could not be found so the landlord bought a new dryer. The repair shop estimated the cost of the repair – if the part had been available – at \$225.00. The replacement dryer cost just over \$400.00. The tenant testified that the dryer worked fine until a couple of days before they moved out and that the dark substance could have been there all along as they never noticed it.

*Kitchen window.* The tenant had put an air conditioner in the window. The tenant acknowledged that he took the air conditioner when he moved out but forgot to put the window back. When the landlord took possession of the rental unit the window was laying on the deck. During the tenancy water had leaked around the air conditioner and damaged the drywall below.

The landlord said he and friend spent a day on this repair. They took out a 4 foot by 8 foot section of drywall and replaced it with a new sheet of drywall. Although the drywall was wet fortunately the studs and insulation were dry. They to mud, sand and paint the new drywall. The landlord supplied the materials and bought his friend a very nice lunch for his labour. He did not claim anything for his own labour. The landlord claims \$285.00 for this repair.

The tenant said the damaged area was only a small spot – about one foot by one foot – and the larger repair was unnecessary. He also argued that since the landlord has an inventory of drywall and paint supplies there should be no cost for materials. The landlord responded that he paid for the supplies in his inventory; they were not free.

*Pinholes in bedroom.* The landlord claims \$56.96, for materials only, for the repair of dozens and dozens of pinholes. The tenant admitted this claim.

*Locksmith.* The landlord claims \$123.20 to change the locks. The tenant testified that they left the keys in the kitchen.

*Blinds.* The landlord claimed \$50.30 for replacing one damaged blind and two missing blinds. The tenant admitted that one blind was damaged but says there never were any blinds in the lower level when they moved in.

*Drywall in the garage.* The landlord withdrew this claim at the hearing.

*Repaint living room ceiling and bedroom doors.* The landlord testified that the ceiling had been painted two years before the start of this tenancy. At the end of the tenancy there were blueberry stains over a five foot area. To ensure continuity of colour the entire ceiling was repainted at a cost of \$360.00. The landlord hired someone to do this work for him. The landlord testified that the room is 16 feet by 20 feet.

The tenant did not dispute the stains on the ceiling but argued that the landlord could have just dabbed the stained areas with a product known as Kilz and then spot painted the ceiling. He also provided quotes from two painting companies: one quoted \$200.00 plus GST to paint a stippled ceiling of approximately 100 square feet and the other quoted \$168.00 plus GST to stain block and apply a full coat "to make uniform finish" for a room 12 feet by 14 feet.

The landlord included the cost of paint for three bedroom doors in this claim. He did the painting himself and did not charge for his labour. The tenant admitted that the doors had stickers on them but argued that was normal wear and tear.

*Living room wall repair.* The tenants put up two short pieces of 2 X 4 lumber on the living room wall on which they hung their television. They did not remove the 2 X 4s at the end of the tenancy. The landlord removed the boards, repaired the holes, and painted the wall. He claimed \$33.87 for the materials; nothing for his labour. The tenant admitted they had put the boards up.

*Garbage clean-up.* The landlord hired a local person to help with the clean-up. This person charged \$40.00 a load. They took two loads to the landfill and one load to the Salvation Army. According to the landlord it took all day to clean up the garbage. The landlord did not claim for his labour but he claimed \$120.00 for the helper and \$12.50 for landfill charges.

The landlord testified that he did not claim anything for cleaning because he always has the unit professionally cleaned before the start of each new tenancy.

The tenant agreed that some stuff was left in the rental unit. He says he knows the landlord went to the landlord fill himself and that he went to the furthest landfill from the rental unit.

*Balance of August rent.* The tenant paid \$900.00 on August 3, 2012 and nothing else. The tenant testified that their intention was that the security deposit would be applied to the balance of the rent.

*September rent.* The landlord testified that he showed the unit on August 15 and that person was prepared to take the unit but not in the condition in which she saw it. It took him about 2.5 weeks to clean and repair the unit. This person started renting as of October 1. She was not able to start her tenancy any earlier as her previous landlord was not prepared to end her tenancy before the end of September.

The tenant argues that they gave their notice to end tenancy on August 1. He filed ads from a person looking for roommates for this house. The ads were posted on August 19 and state she will be moving in September 15.

### Analysis

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

In a claim by a landlord for damage to property, the normal measure is the cost of repairs or replacement cost (less an allowance for depreciation), whichever is lesser. The Residential Tenancy Branch has developed a schedule for the expected life of fixtures and finishes in rental units. This depreciation schedule is published in *Residential Tenancy Branch Guideline 40: Useful Life of Building Elements* and is available on-line at the Residential Tenancy Branch web site.

It should be noted that although a landlord may claim for their own time spent cleaning or making repairs this landlord did not.

I make the following findings for each claim made by the landlord:

*Bathroom mirror.* The claim of \$17.92 was admitted by the tenant.

*Stove element and receptacle.* The only evidence as to whether this element was working at the start of this tenancy is the conflicting sworn oral testimony of the parties

and the unsworn statement from the tenant's friend. There is no other evidence such as completed move-in condition inspection report. The great advantage of a property completed move-in or move-out condition inspection report is that section 21 of the *Residential Tenancy Regulation* provides that in a dispute resolution proceeding, a condition inspection report completed in accordance with the legislation is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. . The landlord has not been able to tip of probabilities in his favour. This claim is dismissed.

*Dryer.* The tenant gave evidence about a number of situations where they complained to the landlord about maintenance issues. I find it unlikely that they would not have complained about a mysterious black substance in a clothes dryer if it had been there at the start of the tenancy. The expected useful life of a dryer is 15 years. This dryer would have been at least six years old at the end of this tenancy so any award made to the landlord must be reduced by 40%. I award the landlord \$135.00 (\$225.00 less 40%) for this claim.

*Kitchen drywall repair.* The difference in time, effort and material between replacing a small section of drywall and a slightly larger section of drywall is not that significant. As the issue was water damage the landlord was wise to cut away a larger portion of the wall to be sure there was not mold behind the wall. I award the landlord \$285.00 for this item.

*Locksmith.* Section 37 of the *Residential Tenancy Act* requires a tenant to give the landlord all the keys at the end of the tenancy. Even if the tenant did leave the keys in the rental unit when they left they left the house open for a week, thereby allowing the keys to be taken by anyone who might wander in. They are responsible for the cost of changing the locks and I award the landlord \$123.20 for this item.

*Blinds.* The only evidence before me as to whether there were blinds on the lower level is the contradictory oral evidence of the parties. The landlord has not proven this portion of his claim on a balance of probabilities. I award the landlord \$32.90 (\$29.97 + 12% HST) for one damaged blind.

*Ceiling.* First of all, I find that the depreciation rate stated for interior paint is only reasonably applied to walls, not to textured ceilings. Accordingly, no allowance for depreciation will be made to any amount awarded for this item.

I accept the landlord's evidence as to the size of the room. The landlord's claim equals \$1.25 per square foot. The tenant's quotes are for \$2.24 per square foot and \$1.00 per square foot. Both of the quotes obtained by the tenant were to paint the whole ceiling and one specifically stated that this was to ensure a uniform finish. I find the procedure followed by the landlord and the price paid for the work consistent with the quotes filed by the tenant and I award the landlord \$360.00 for this item.

Finally, the number of stickers and tape marks on the doors do not constitute normal wear and tear.

*Living room wall repair.* This does not constitute normal wear and tear. I award the landlord \$33.87 for this claim.

*Garbage clean-up.* If the tenant could have cleaned up the garbage more economically than this, he should have done so. Based on the evidence before me, particularly the photographs filed by the landlord, I find the landlord's claim more than reasonable. I award the landlord \$132.50 for this item.

*August rent.* I find that the balance of the August rent, \$650.00, is due to the landlord.

*September rent.* The tenancy agreement, which was filed by the tenant, contains the following notice under the heading "Renewal, Termination and Notice": "ONE CLEAR MONTH NOTICE MUST BE GIVEN IN WRITING BY THE LAST DAY OF THE MONTH PRECEEDING THE END OF YOUR TENANCY." This clause reflects the wording of section 47 of the *Residential Tenancy Act* which provides that a tenant may end a periodic tenancy by giving the landlord notice effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that the rent is payable under the tenancy agreement. The effective date of a notice to end tenancy given on August 1, August 3, or any other date in August is September 30. The tenants are responsible for the September rent subject to the landlord's duty to mitigate his damages by re-renting the unit as soon as possible.

The landlord did find a new tenant very quickly. However, the tenants did not leave the unit in a condition suitable for a new tenant nor did they tell the landlord they had moved out on August 23 which would have allowed him to start cleaning and repairs before September 1.

Most responsible tenants interested in this unit would have to give their existing landlords one month's notice to end tenancy, which would not be effective until September 30. While the new tenant's ads expressed her hope that she could move in September 15 there is no evidence that she actually did so.

I find that the landlord met his obligation to mitigate his damages and I award him \$1550.00 for the September rent.

Finally, the tenant provided some evidence about lost time from work and other expenses incurred during this tenancy. However, there was no application for dispute resolution filed by him and no decision is made on any of his claims.

In *summary*, I find that the landlord has established a total monetary claim of \$3370.39 comprised of cleaning and repairs in the amount of \$1120.39; balance of August rent in the amount of \$650.00; September rent in the amount of \$1550.00; and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the deposit of

\$750.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2620.39.

Conclusion

A monetary order in favour of the landlord has been made. If necessary, this order may be filed in the Small Claims court and enforced as an order of that court.

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: July 05, 2013

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Residential Tenancy Branch