



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNDC MNSD FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Section 67 for rental loss, late fees and damages to the property;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

### **SERVICE**

Both parties attended and the tenant agreed that he had received the Application for Dispute Resolution by registered mail. He said he did not receive some of the evidence. The landlord gave sworn testimony that he had served the evidence in September to the forwarding address provided by the tenant in June 2013. The tenant moved again within a month and provided no other address. I find that the tenant is served with the Application according to section 89 of the Act and with the evidence according to section 88 of the Act; if he provided no forwarding address to either the landlord or the post office after having received notification of the hearing date, I find the landlord should not be denied the opportunity to have this hearing because of this oversight of the tenant.

### **Preliminary Issue:**

The tenant pointed out that one letter of his surname was incorrect. On consent of the parties, the name was amended for the decision and order.

### **Issue(s) to be Decided:**

Has the landlord has proved on a balance of probabilities that the tenant owes late fees and is responsible for rental loss. Has he proved that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? To how much compensation has the landlord proved entitlement and he is also entitled to recover the filing fee?

**Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in November 2011, rent was \$2044 at the time the tenants left and a security deposit of \$1175 and pet damage deposit of \$588 was paid in November 2011. It is undisputed that the pet damage deposit of \$588 has been refunded to the tenant.

The premises were a home about 50 years old with many updates. The parties signed a mutual agreement to end tenancy on May 31, 2013, the tenants provided their forwarding address at that time but did not vacate until June 4<sup>th</sup> or 5<sup>th</sup>, 2013. The tenant said he had hurt himself and the move was difficult so the landlord verbally assured him that they did not need to be concerned about moving out a bit late. The landlord claims it cost him half a month's rent for the new tenants had to give one month's notice to their old landlord and could not do this until June 15, 2013 as possession of the home had not been regained. The landlord also said that it took some time to complete the repairs.

The landlord claims as follows: (total on application \$1600 estimated for damages only)

\$500: for 3 late payments of rent (charging \$50 a day)

\$1150: half of one month for late move out (based on the rent to the new tenants)

\$51.79: for parts for a new shower head

\$267.75: for a plumber to fix the shower: the tenant said the shower was ancient and had to be fixed many times while they lived there; the landlord agreed he had to fix it twice but said it was due to rough usage on the metal pipe.

\$901: for refinishing the damaged hardwood floor; the tenant said the damage was minor and was reasonable wear and tear but also said the landlord had paid about \$3000 for a new floor when they first moved in.

\$72.77 for material and \$420 labour for painting the many holes that had been filled by the tenant; it was agreed that the painting was done in 2011 but the tenant said the holes were minor holes from their mounted pictures and should not have required repainting of the whole room.

\$15.98: to replace the lock for lost keys

\$44.79: for a lost remote control. The tenant did not dispute this.

\$236.25: for cleaning. The landlord agreed he did not note this on the move out condition inspection report because his eyesight is not so good.

\$489.75 for required garden work; clause 7 of the lease required the tenants to maintain the garden. The tenant agreed there were some weeds and the ivy may have overgrown the steps but contends this cost is excessive and if he had known this problem, he could have done the garden work before leaving.

(total of damage per invoices is \$2080.08 but landlord claimed an estimated \$1600 on the application for damages)

In evidence are 67 photographs from the landlord, copies of multiple leases, the mutual agreement to end tenancy, many emails, a move-in and move-out condition inspection report and invoices which support each amount claimed by the landlord.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

**Analysis:**

I find it is undisputed that the tenant was late three times in paying rent. Although the landlord claimed \$50 per day late, I find the Residential Tenancy Regulation section 7(1) (d) limits a late fee to \$25 per late payment. Therefore I find the landlord entitled to compensation of \$75 for the three late payments.

I find the tenants had agreed to vacate the property by May 31, 2013 but did not vacate until June 4, 2013. I find the evidence of the landlord credible that this cost him 15 days of rent as the new tenants had to give one month's notice to their landlord and could not do this until they were sure these tenants had vacated. I find the landlord entitled to recover rental loss of \$1022 for one half of one month's rent as he lost 15 days of rent due to the tenant over holding.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord entitled to recover \$44.79 for the lost remote control which the tenant agreed he lost. I find the landlord's evidence credible that this tenant caused damage to the hardwood floor which the tenants agreed was installed at the commencement of the tenancy. I find the landlord's evidence supported by the photographs, the tenant's statements and invoice provided. I find the landlord paid \$901 to refinish the floor; hardwood floors are assigned a useful life of 20 years in the Residential Tenancy Policy Guidelines which are designed to account for reasonable wear and tear in rented premises. As the floor was two years old when the tenants moved out, I find the landlord entitled to recover 90% of the cost to refinish it or \$810.90.

I find the evidence of the tenant and landlord conflict in respect to the plumbing issue but both agree that the plumbing/shower was old and the landlord fixed it twice during this tenancy. I find the landlord's evidence credible that the tenants broke the shower head as the tenants agreed it was broken and the photographs support this. As the

shower head was about a year old and the Guidelines assign a useful life for plumbing items of 20 years, I find him entitled to recover 95% of \$51.79 and \$267.75 for replacement of a shower head for a total of \$303.56..

The landlord agreed in the hearing that he had insufficient evidence of the need for cleaning at a cost of \$236.25 as his sight was not good enough to see the amount of cleaning required at move-out so he agreed to waive this amount.

In respect to the claim for the garden work, I find the landlord's evidence credible and prefer it to the tenant's as his evidence is well supported by photographs showing the garden before the tenancy began and after it ended. Although the tenant said the cost to do it was excessive and he could have done it if warned, I find the lease clearly states in clause 7 that it is the tenants' responsibility to maintain the landscaping. The tenant agreed in the hearing that there were some weeds and the ivy might have overgrown; I find he had the option to do it himself and since he did not, he is responsible for the landlord's cost to do it. I find the landlord entitled to recover the cost as invoiced \$498.75 (including tax).

The above allowed amounts for damages total \$1658 and the landlord claimed \$1600 for damages on the Application. As explained to the parties in the hearing, on the principle of natural justice that a person must be informed of the total claimed against him/her, I find the landlord is limited to recovery of \$1600 for damages. Therefore, I decline to award further amounts for lost keys and painting and therefore find it unnecessary to consider the merits of those claims. I dismiss the remaining damage claims of the landlord that are in excess of the \$1600 claimed in the Application without leave to reapply.

The tenant contended that the landlord had filed his application too late to claim against the security deposit. I find the tenant provided the forwarding address on June 5, 2013 and the landlord filed the application on June 19, 2013; therefore, I find the landlord filed this application within the 15 days allowed in section 38 of the Act. The security deposit will be used to offset the amount owed by the tenant.

### **Conclusion:**

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

**Calculation of Monetary Award:**

Late fees	75.00
Rental loss	1022.00
Damage claim limited as noted above	1600.00
Filing fee	50.00
Less security deposit (no interest 2011-2013)	-1175.00
Total Monetary Order to Landlord	1572.00

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: September 25, 2013

---

Residential Tenancy Branch

