



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Rivers Inlet Enterprises Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for damage to the unit, site or property pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:30 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he sent a copy of the landlord's dispute resolution hearing package and written evidence package to the tenant at the tenant's place of residence by registered mail on June 5, 2013. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. He also gave sworn oral testimony to confirm the accuracy of the address where the landlord sent the registered mail. He said that he had also spoken with the tenant since the tenant received the hearing package and testified that he was certain that the tenant was aware of this hearing. Based on the undisputed sworn testimony of the landlord and in accordance with sections 88 and 90 of the *Act*, I am satisfied that the tenant has been deemed served with copies of the landlord's hearing package and written evidence package on June 10, 2013, the fifth day after their registered mailing.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord testified that this tenancy began as a one-year fixed term tenancy on February 5, 2009. Monthly rent at that time was set at \$1,200.00. The landlord testified that each year the landlord entered into a new one-year fixed term tenancy with the tenant by way of a new Residential Tenancy Agreement (the Agreement). He said that the most recent signed Agreement covered the period from January 31, 2012 until January 31, 2013. However, he said that the tenant did not sign a new fixed term Agreement after January 31, 2013. Despite the landlord's view that the Agreement was still a fixed term tenancy, I advised the landlord at the hearing that the tenancy converted to a periodic tenancy when the previous Agreement expired and no new Agreement was signed in its place. Monthly rent by the time the tenant abandoned this tenancy by May 1, 2013 was set at \$1,250.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$600.00 security deposit paid on or about February 5, 2009.

The landlord entered into written evidence copies of the joint move-in condition inspection report of February 5, 2009 and the landlord's own May 3, 2013 move-out inspection report conducted after the tenant abandoned the rental unit without notifying the landlord. The landlord testified that copies of these reports were provided to the tenant.

The landlord's application for a monetary award of \$4,734.85 included the following items outlined on the landlord's move-out condition inspection report of May 3, 2013:

<b>Item</b>	<b>Amount</b>
Tenant's Failure to Return Keys	\$125.00
Garbage Removal	250.00
Disposal of Mattresses	40.00
Replacement of a Light Shade	20.00
Drywall Replacement	250.00
Cabinet Repair	75.00
Cleaning	320.00
Light Bulb Replacement (10 Bulbs at \$5.00 each)	50.00
Replacement of Drapes (1 Missing)	75.00
Replacement of 6 Damaged Doors	592.41
Labour to Install Replacement Doors	600.00
New Carpets	937.44
Painting	1,400.00
<b>Total Monetary Order</b>	<b>\$4,734.85</b>

At the hearing, the landlord also requested a monetary award of a further \$500.00 for the tenant's breaking of his "lease." The landlord also requested recovery of the \$50.00 filing fee for this application.

The landlord entered into written evidence copies of invoices and receipts documenting the actual amounts of repairs and expenditures arising out of this tenancy. The landlord said that it was not the intention of the landlord to seek recovery of any painting costs from the tenant as the landlord typically repaints all of the rental units when new tenants take occupancy in this rental property. Although the landlord testified that he included a copy of the Agreement in his written evidence, the Residential Tenancy Branch (the RTB) had no record of having received this document. The landlord said that there were photographs showing the extensive damage arising out of this tenancy, but the landlord did not enter this into evidence.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Although the landlord testified that he applied standard cost estimates in the move-out condition inspection report, I can only consider the landlord's documented losses arising out of this tenancy. As such, I have given careful consideration to the receipts entered into written evidence by the landlord.

The landlord entered into written evidence a copy of a May 24, 2013 invoice totaling \$1,961.55. This invoice included a mix of material and labour.

Based on a comparison of the joint move-in condition inspection report and the move-out inspection report and the landlord's sworn testimony, I find that the landlord is entitled to a monetary award of \$150.00 for garbage removal, including the use of a truck and labour.

As part of the landlord's May 24, 2013 invoice, the landlord submitted an \$886.55 charge for "Carpet removal and labor." In addition, the landlord submitted an invoice for \$513.45 to install the carpet and a further bill of \$937.44 for the carpeting materials. In total, the charges claimed by the landlord for carpeting/flooring was \$2,337.44.

The joint move-in condition inspection report confirms the landlord's sworn testimony that the carpeting was in good condition when this tenancy began. The landlord testified that this was basically a new rental unit when the tenant occupied the rental unit as the landlord had provided new appliances, new carpeting and linoleum, and had recently painted the premises. The move-out condition inspection report noted that the flooring throughout this rental unit was dirty and damaged when the tenancy ended. The landlord testified that the rental unit was extensively damaged.

The RTB has established Policy Guideline 40 to assist Arbitrators in assessing the useful life of various items in a residential tenancy. According to Guideline 40, the useful life of carpeting and most flooring surfaces in a residential tenancy is estimated at 10 years. Based on this Guideline, I find that the landlord was required to replace the carpeting/flooring in this rental unit 4.33 years after it was installed, instead of the more typical 10 years. As such, I find that the landlord is entitled to the recovery of that portion of his expenses related to carpeting that exceeded the normal useful life of a tenancy. This results in my finding that the landlord is entitled to recover 56.7% of the carpet replacement costs (i.e.,  $(10 - 4.33) / 10$  or 56.7%). This results in my finding that the landlord is entitled to a monetary award of \$1,325.33 ( $\$2,337.44 \times 56.7\% = \$1,325.33$ ) for the replacement of flooring in this rental unit.

Based on a balance of probabilities, I find that the landlord is entitled to recover \$250.00 in damage to replace drywall damaged during this tenancy and \$75.00 to repair cabinets. I also allow the landlord's application for recovery of the \$100.00 waste disposal charge the landlord incurred on May 8, 2013 to dispose of contents from the tenant's rental unit that day. Based on the move-in and move-out condition inspection reports and the detailed description and invoice provided by the landlord, I am also satisfied that the landlord is entitled to a monetary award of \$320.00 for cleaning this rental unit at the end of this tenancy.

I have also considered the landlord's inspection reports, an invoice of \$592.41 for replacement doors and the landlord's sworn testimony regarding the condition of the doors at the end of this tenancy. The useful life of doors as set out in RTB Policy Guideline 40 is set at 20 years. The landlord testified that this rental building was constructed 36 years ago, but was uncertain as to whether the doors had ever been replaced. However, the landlord testified that the doors were in good condition at the

commencement of this tenancy, confirmed by the joint move-in condition inspection report. While photographic evidence would have been helpful to support the landlord's sworn testimony regarding the damage caused to the doors during this tenancy, I am satisfied by the landlord's undisputed sworn testimony that the damage caused to the doors requiring their replacement exceeded that which could be anticipated through normal wear and tear over the course of this tenancy. For these reasons and after having regard to RTB Policy Guideline 40 as well as the landlord's written and oral evidence, I find that the landlord is entitled to recover one-half of the expenses incurred for replacing the doors in this rental unit. I do so as I accept that these doors were not at the end of their useful life and appear to have been willfully and purposefully damaged by the tenant during the course of this tenancy. I allow the landlord a monetary award of \$596.21 for labour and materials relating to the replacement of doors in this rental unit {50% x \$600.00 (labour) = \$300.00 and 50% x \$592.41 = \$296.21 (for door materials)}.

I dismiss the landlord's claim that the landlord was entitled to a monetary award for the tenant's actions in breaking his lease. I do so as I find that this tenancy had converted to a periodic tenancy by February 2013, when a new Agreement was not signed. However, I do accept the landlord's sworn testimony that the damage arising out of this tenancy was so extensive that there was no way that the landlord could have completed repairs and re-rented the premises to another tenant for any portion of May 2013. The landlord was eventually able to locate another tenant for this rental unit less than a month before this hearing and after repairs had been completed. I accept the landlord's testimony that the premises were suitable for occupancy by June 1, 2013. As such, I allow the landlord a monetary award of \$1,250.00 for the loss of rent for May 2013. I find that this loss was a direct result of the tenant's failure to provide the required one month's written notice to end this tenancy in accordance with sections 45(1) and 52 of the *Act* and the damage that was caused during this tenancy.

I dismiss the remainder of the specific items listed by the landlord in his application without leave to reapply as I find that the landlord has not supplied adequate evidence or bills to verify that actual losses for these items have occurred.

I allow the landlord to retain the tenant's security deposit plus applicable interest. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover damage and losses arising out of this tenancy as well as the filing fee and to retain the tenant's security deposit.

<b>Item</b>	<b>Amount</b>
Garbage Removal	\$150.00
Flooring Replacement	1,325.33
Drywall Replacement	250.00
Cabinet Repair	75.00
Waste Disposal Charge	100.00
Cleaning	320.00
Labour and Materials to Replace Damaged Doors (\$300.00 + \$296.21 = \$596.21)	596.21
Landlord's Loss of Rent for May 2013	1,250.00
Less Security Deposit	-600.00
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$3,516.54</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: September 06, 2013

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Residential Tenancy Branch

