



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent; damage to the unit or property; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The two named co-tenants did not appear at the hearing.

The landlord testified that the female tenant was served with the hearing documents in person, at her place of work, on July 10, 2013. The landlord was unable to locate the male tenant. I accepted that the female tenant was sufficiently served with notification of this proceeding and I amended the Application to exclude the male tenant since he was not served.

### Preliminary and Procedural Matters

The landlord originally applied for and served the tenant with claims based upon estimates; however, the invoices were not served upon the tenant as the landlord could not locate the tenant after July 10, 2013. The invoices were provided to the Branch and the landlord requested the claim be amended to reflect the actual costs. Considering that some of the actual costs incurred were greater and some were less than those estimated; the landlord had invoices to substantiate the actual costs; and, the actual costs are not significantly different than those estimated, I allowed the landlord's request for amendment based upon actual costs.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to unpaid rent?
2. Has the landlord established an entitlement to compensation for damage to the unit and other damages or loss under the Act, regulations or tenancy agreement?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The one-year fixed term tenancy commenced April 1, 2013 and the tenants paid a security deposit of \$475.00. The tenants were required to pay rent of \$950.00 on the 1<sup>st</sup> day of every month. Pursuant to the addendum, the tenants withheld or were given a monthly credit of \$50.00 in recognition of their agreement to maintain the yard and paid \$900.00 in rent for the months of April, May and June 2013. The tenants failed to pay rent for July 2013 and on July 3, 2013 the landlord served the male tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. Also on July 3, 2013 the tenants abandoned the rental unit.

The landlord is seeking recovery of \$950.00 in unpaid rent. In addition, the landlord requested recovery of the following amounts:

	Estimated at time of filing	<b>Actual cost</b>
Rubbish removal	\$100.00	<b>\$90.00</b>
Cleaning	\$150.00	<b>\$250.00</b>
Yard work	\$200.00	<b>\$150.00</b>

The landlord testified that the rental unit was left extremely filthy and the back yard extremely overgrown.

The landlord was also seeking to recover the \$50.00 credit the landlord permitted the tenants to deduct from rent for yard work for the months of April, May and June 2013, or \$150.00. The landlord explained that was of the belief the tenants had been doing the yard work as the front yard appeared to be maintained during the tenancy. However, at the end of the tenancy the landlord discovered that the back yard had not been maintained by the tenants.

### Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to the landlord's claims against the tenants.

The Act requires a tenant to pay rent in accordance with their tenancy agreement. A tenancy agreement includes any addendum that forms part of the tenancy agreement. Upon review of the tenancy agreement and the addendum provided as evidence, I accept that the tenants had entered into a fixed term tenancy and were required to pay rent of \$950.00 on the 1<sup>st</sup> day of every month. I also find that a monthly credit of \$50.00 would be given to the tenants for performing yard work at the property. Based upon the

conduct of the parties during the tenancy, I accept that the monthly credit was to be deducted from rent otherwise payable. Since the tenants failed to pay rent for July 2013 and abandoned the unit on July 3, 2013 I accept the landlord's position that the tenants did not perform the tasks necessary in order to receive the credit for July 2013 and the landlord is entitled to recover unpaid rent of \$950.00 from the tenants. Therefore, I award the landlord unpaid rent of \$950.00 for the month of July 2013.

The addendum to the tenancy agreement provides that the tenants would perform "lawn and garden maintenance" at the residential property in exchange for a monthly credit of \$50.00 and I find it reasonable to conclude that this means the front and back yard of the property was to be maintained. Based upon the landlord's undisputed submission, I find the tenants failed to maintain the back yard, for which they were compensated by way of the credit applied to rent, and the landlord incurred a further loss of \$150.00 to hire a company to bring the back yard up to a reasonable standard. Therefore, I find the landlord entitled to recover from the tenants the \$150.00 she paid to the yard clean up company for weed-eating and mowing.

The Act requires that a tenant leave a rental unit vacant and reasonably clean at the end of the tenancy. This means the tenant is responsible for taking all of their possessions with them. Based upon the landlord's undisputed submission, I am satisfied the tenants left the rental unit dirty and in need of cleaning and rubbish removal. Therefore, I grant the landlord's request to recover \$250.00 and \$90.00 for cleaning and rubbish removal.

With respect to recovery of the \$150.00 credit given to the tenants for yard work for the months of April, May and June 2013 I deny this portion of the landlord's claim. The landlord has already been awarded recovery of the loss incurred to rectify the tenant's failure to perform yard work as agreed upon. I find that to award the landlord a further \$150.00 would amount to double recovery of the loss incurred.

As the landlord's application had merit, I award the landlord recovery of the \$50.00 filing fee she paid for this Application for Dispute Resolution.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

In light of all of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent: July 2013	\$ 950.00
Rubbish removal	90.00
Cleaning	250.00
Yard work	150.00
Filing fee	50.00
Less: security deposit	<u>(475.00)</u>
Monetary Order	\$ 1,015.00

The Monetary Order must be served upon the tenant and may be filed in Provincial Court (Small Claims) to enforce as an Order of that court.

### Conclusion

The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$1,015.00 to serve and enforce as necessary.

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: October 30, 2013

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Residential Tenancy Branch

