



# 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 the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and utilities, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that on July 6, 2013, the landlord handed him a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the 10 Day Notice) with an effective date of July 16, 2013. The tenant entered written evidence that the landlord handed him a second 10 Day Notice on July 17, 2013. The tenant also confirmed written evidence submitted by the landlord and the landlord's sworn testimony that the tenant was handed a copy of the landlord's dispute resolution hearing package on August 20, 2013. Based on the evidence before me and the sworn statements of the parties, I am satisfied that the landlord served the above documents to the tenant in accordance with the *Act*. I am also satisfied that both parties served one another with their written evidence in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, utilities and losses arising out of this tenancy? Is the landlord entitled to a monetary award 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

This periodic tenancy was scheduled to commence on June 1, 2012. As per the terms of their Residential Tenancy Agreement (the Agreement), signed on May 11, 2012, monthly rent was set at \$1,000.00, payable in advance on the first of each month, plus ½ of the utilities. Both parties agreed that the premises were not ready for the tenant's occupancy until June 15, 2012, at which time the tenant moved into the rental home. In his written evidence, the landlord stated that he credited the tenant with one-half month's rent for June 2012. However, at the hearing, both parties agreed that the tenant paid the entire monthly rent of \$1,000.00 for June 2012, even though he could not take occupancy until June 15, 2012. The landlord continues to hold the tenant's \$500.00 security deposit paid on May 11, 2012.

The parties participated in a joint move-in condition inspection on June 8, 2012, while the landlord was still in the process of renovating the bathroom in this rental unit. The landlord entered into written evidence a copy of the joint move-in condition inspection report signed by both parties. The landlord testified that the tenant abandoned the rental unit on August 14, 2013, without conducting a proper cleaning of the property and without participating in a joint move-out condition inspection. The landlord entered into written evidence a copy of the move-out condition inspection report he completed without the tenant on August 15, 2013. The landlord maintained that the tenant moved on August 14, 2013, without leaving the keys or a forwarding address. The landlord did not provide any evidence with respect to any written notices to the tenant requesting a final condition inspection.

The tenant testified that the landlord had agreed initially to let him remain in the rental unit until August 15, 2013. The tenant provided undisputed written evidence that the landlord contacted him on August 4 or 5, 2013, to request that he vacate on August 14, to enable the landlord to prepare the suite for the next tenant who would be taking occupancy on August 15. The tenant maintained that he agreed to try to vacate on August 14, but was unable complete his cleaning by 12:00 p.m., when the landlord arrived to advise him that he needed to be out of the rental unit immediately as carpet cleaners were on their way. The tenant entered into written evidence the following statement regarding the end of this tenancy.

*...I said they may clean the carpet or you may paint, there is nothing in this house. besides I told him you never cleaned the place for me! And today is still the 14<sup>th</sup> ...He demanded that I be gone so I said ok, You giving me no time to do what I need to do and I'm moving to no place as a favor to you. He walked around the place agreed that it was clean made a comment on the floors being wet and he went away...*

(as in original)

Although the landlord's application identified \$1,719.00 as the amount of the requested monetary award, the landlord entered into written evidence the following breakdown of his requested monetary award, which totalled \$1,667.00 as of November 11, 2013:

<b>Item</b>	<b>Amount</b>
Unpaid August 2013 Rent	\$1,000.00
Broken Dining Room Blinds	56.00
Carpet Cleaning	110.00
General Cleaning	175.00
Missing Bathroom Light Fixture	83.00
Lock Change	29.00
Garbage Removal and Dump Fees	100.00
Unpaid Utilities	114.00
<b>Total of Above Items</b>	<b>\$1,667.00</b>

At the hearing, the landlord reduced the amount of his requested monetary award to \$1,611.00. He testified that he had subsequently accepted the tenant's assertion that the blinds were damaged at the beginning of this tenancy.

#### Analysis – Landlord's Claim for Unpaid Rent and Utilities

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. In this case, the tenant did not pay all of the amount identified as owing in the first 10 Day Notice within 5 days of receiving that Notice. However, the landlord reinstated the tenancy by accepting additional rent and utility payments from the tenant on July 17 or 19, 2013. A second 10 Day Notice was issued to the tenant on July 17, 2013.

The landlord's 10 Day Notice of July 5, 2013, served on July 6, 2013, identified \$1,500.00 in unpaid rent owing as of June 1, 2013, although under that date the landlord also identified July 1, 2013, as the date when rent was due. The landlord's 10 Day Notice also identified \$1,150.00 in unpaid utilities owing as of July 5, 2013. Although repairs cannot be included in a 10 Day Notice, the landlord also added a \$105.00 charge for unplugging the toilet in this 10 Day Notice.

The tenant entered into written evidence the second 10 Day Notice dated July 17, 2013. On this 10 Day Notice, \$1,000.00 in unpaid rent was identified as owing, \$1,217.00 in unpaid utilities owing as of July 17, 2013, and \$105.00 for the unplugging of the toilet. Rather than issuing receipts, the landlord initialled the 10 Day Notice, indicating that the tenant paid \$500.00 in rent on July 5, 2013. The landlord also initialled that the tenant

had paid \$822.00 in cash on the 15<sup>th</sup>. Elsewhere on this document, the landlord signed that he had been paid \$1,300.00 on July 15, 2013. In the tenant's written evidence, the tenant confirmed that he paid \$500.00 towards the rent on July 5, 2013, and \$822.00 on July 19, 2013.

Landlords are responsible for keeping proper records of amounts owing and payments made during a tenancy. Landlords also bear the responsibility for providing receipts, especially for cash payments during a tenancy. In this case, I find that there is a particularly confusing payment history, complicated by the inconsistencies in the payment amounts and the dates in the second 10 Day Notice.

The landlord initially testified that the \$1,000.00 requested was for unpaid August 2013 rent. He then corrected this testimony to assert that \$500.00 of this unpaid rent was for July 2013 and the other \$500.00 was for August 2013. The landlord's failure to produce proper and consistent receipts for payments from the tenant leads me to conclude that the only rent owing for this tenancy was for the first 14 days of August 2013. There is undisputed evidence that the tenant did not pay any rent for August 2013 and remained in the rental unit for the first 14 days of August 2013. I also find that the landlord was able to re-rent the premises to another tenant as of August 15, 2013, so did not experience any losses beyond August 14, 2013, as a result of the tenancy that ended on August 14, 2013.

Under these circumstances, I find that the landlord is entitled to a monetary award in the amount of \$451.61 ( $\$1,000.00 \times 14/31 = \$451.61$ ) for rent owing for the first 14 days of August 2013. However, I also find that there is evidence that the landlord did not have the rental unit ready for occupancy on June 1, 2012, when this tenancy began. Both parties entered sworn testimony at the hearing that the tenant was not provided any credit towards the first 14 days of his tenancy when the landlord's delays in having the rental unit ready for occupation prevented the tenant from occupying the rental unit. Under these circumstances, I reduce the landlord's entitlement to a monetary award by \$466.67 ( $\$1,000.00 \times 14/30 = \$466.67$ ) to reflect the loss in value of this tenancy created by the landlord's acceptance of rent for the full month of June 2012. In essence, the tenant had already paid \$466.67 more than he was supposed to have paid for rent to the landlord from the beginning of this tenancy.

Although the parties entered into written evidence and sworn testimony different accounts of the tenant's payment of his portion of the utilities for this tenancy, the landlord's only claim for utilities was for \$114.00 that he maintained remained owing at the end of this tenancy. The tenant did not dispute the landlord's assertion that the tenant's payment on July 17 or 19, 2013 would not have included the landlord's last

utility bill for this tenancy, for the August 12, 2013 billing date. Based on this testimony and the copies of utility bills entered into written evidence by the landlord, I find that the landlord has demonstrated that he is entitled to a monetary award of the requested \$114.00 for unpaid utilities arising out of the last billing period of this tenancy. I issue a monetary award in the landlord's favour in this amount.

#### Analysis – Landlord's Application for Damage and Losses

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.

As noted above, the landlord withdrew his claim for damage to the blinds at commencement of this hearing.

In considering the landlord's claim for professional steam cleaning of the carpets at the end of this tenancy, I note the following wording of section 23 of the Agreement:

*...While professional cleaning is recommended at all times, if the carpets and window coverings are new or professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy...*

Although there is an indication in the joint move-in condition inspection report that some of the carpets had been shampooed, the landlord did not provide any evidence that the carpets were either new or had been professionally cleaned immediately prior to the commencement of this tenancy. I also note that the June 8, 2012 date of the joint move-in condition inspection was a week before the rental unit was actually ready for occupancy. During the first two weeks of June 2012, the rental unit was in the midst of renovations which may have influenced the condition of the carpets by the time the rental unit was ready for occupancy. On a balance of probabilities, I find that the landlord is not entitled to a monetary award for professional cleaning of the carpets as I find that the landlord has not demonstrated that the carpets were professionally cleaned when the tenants took occupancy of this rental unit. I dismiss the landlord's application for a monetary award for carpet cleaning without leave to reapply.

I have carefully considered the written evidence of the parties and the sworn oral testimony of the tenant, the landlord and the landlord's witness, the woman who cleaned the rental unit at the end of this tenancy. While the landlord conducted a joint move-in condition inspection, this occurred over a week before the tenant could take occupancy of this rental unit and as repairs and an extensive renovation was ongoing. The tenant provided written evidence and sworn testimony that the rental unit needed considerable cleaning when he took occupancy of the rental unit, although this evidence varied from his signed joint move-in condition inspection report. The landlord's move-out condition inspection report revealed a need for considerable cleaning at the end of this tenancy. This evidence was confirmed by sworn testimony by the individual hired to clean the rental unit at the end of this tenancy. The tenant entered written evidence that he did clean much of the rental unit, but admitted that he could not clean the oven because the landlord appeared earlier than anticipated and demanded that he vacate the premises.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. The joint move-in condition inspection report conducted on June 8, 2012, a week before the tenant could move in, showed that the rental unit was in generally good condition at that time. However, the landlord conducted his move-out condition inspection by himself and did not enter into evidence regarding his compliance with the following provisions of section 36(2)(a) of the *Act*:

***Consequences for tenant and landlord if report requirements not met***

**36** (2) *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

*(a) does not comply with section 35 (2) [2 opportunities for inspection],...*

While the landlord maintained that the tenant abandoned the rental unit, it would seem that the landlord was present when he asked the tenant to leave the rental unit on August 14, 2013, shortly before cleaning staff were to attend the rental unit.

Since I find that the landlord did not follow the requirements of the *Act* regarding the scheduling of a joint move-out condition inspection and because the joint move-in condition inspection occurred a week before the tenant could take occupancy of the premises, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is somewhat limited. However, I also find that the

tenant also did not comply with section 37(2) of the *Act* which requires a tenant to “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.” The parties entered conflicting evidence regarding the condition of the rental unit when the tenancy began and the reasons for the rental unit requiring some cleaning when this tenancy ended.

Based on the oral, written and photographic evidence of the parties, I find on a balance of probabilities that the tenant did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit “reasonably clean” as some cleaning was required by the landlord after the tenant vacated the rental unit. Under these circumstances, I find that the parties should share equally the landlord’s cleaning costs of \$175.00. This results in a monetary award in the landlord’s favour in the amount of \$87.50, one half of the overall cleaning costs demonstrated by the landlord.

The parties provided different accounts of who was responsible for the missing light fixture in the bathroom. The tenant claimed that the bathroom renovations never led to a replacement of the bathroom light fixture. The landlord maintained that there was a light fixture that was apparently packed away by the tenant or one of his children and was never relocated. As I find it unusual that the tenant would not have raised the issue of a missing light fixture after the completion of renovations, I find on a balance of probabilities it more likely than not that this fixture went missing during the course of this tenancy. As such, I find that the landlord is entitled to a monetary award of \$88.77, the amount identified in the landlord’s receipt for this item.

The landlord had his own key to access the rental unit. The *Act* holds landlords responsible for the expenses incurred in changing the locks on rental premises when a new tenancy begins. For these reasons, I dismiss the landlord’s application for a monetary award for changing the locks without leave to reapply.

At the hearing, the landlord accepted that a dresser left at the rental premises was not the tenant’s, but must have been left by someone else on this property. For this reason, the landlord did not pursue his \$100.00 claim for the removal of garbage and the dumping fee to remove the dresser. I dismiss this portion of the landlord’s claim without leave to reapply.

As the landlord has been partially successful in his application, I allow him to recover one-half of his \$50.00 filing fee from the tenant.

I allow the landlord to retain the monetary awards issued in his favour, less the overpaid rent paid by the tenant for June 2012, from the tenant’s security deposit. I order the

landlord to return the remainder of the tenant's security deposit plus applicable interest forthwith. No interest is payable over this period.

### Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which orders the landlord to retain the remaining portion of the tenant's security deposit, once the landlord's claims for unpaid rent, utilities and part of his filing fee are deducted, less the amount of rent overpaid by the tenant for June 2012.

<b>Item</b>	<b>Amount</b>
Unpaid Rent – August 1- 14, 2013	\$451.61
Less Rent Paid by Tenant – June 1-14, 2012	-466.67
General Cleaning	87.50
Missing Bathroom Light Fixture	88.77
Unpaid Utilities	114.00
Less Security Deposit	-500.00
Filing Fee	25.00
<b>Total Monetary Order</b>	<b>(\$199.79)</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: December 03, 2013

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Residential Tenancy Branch



