



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

The landlord attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on August 13, 2013, Canada post tracking numbers were provided as evidence of service, the tenants did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenants have been duly served in accordance with the Act.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on December 1, 2007. Current rent in the amount of \$950.00 was payable on the first of each month. A security deposit of \$475.00 was paid by the tenants.

The parties participated in move-in and move-out condition inspection report. The tenant (CN) agreed in the report that they are responsible for filling holes, carpets, cleaning, fridge and painting. Filed in evidence is a copy on the condition inspection report.

The landlord claims as follows:

|    |                                      |                   |
|----|--------------------------------------|-------------------|
| a. | Unpaid rent for July and August 2013 | \$1,900.00        |
| b. | Cleaning labour                      | \$ 544.00         |
| c. | Painting labour                      | \$ 400.00         |
| d. | Damaged Carpet                       | \$ 500.00         |
| e. | Replace Refrigerator                 | \$ 350.00         |
| f. | Paint and supplies                   | \$ 100.00         |
| g. | Filing fee                           | \$ 50.00          |
|    | <b>Total claimed</b>                 | <b>\$3,844.00</b> |

#### Unpaid rent for July and August 2013

The landlord testified that the tenants did not pay rent for July 2013. The landlord stated she went to the rental unit on July 15, 2013, and the tenants were in the process of moving. The landlord stated that the tenant did not provide any notice that they were moving and their last of their belonging were removed from the property on or about August 2, 2013. The landlord stated she was required to clean the unit. The landlord seeks to recover the amount of \$1,900.00.

#### Cleaning labour

The landlord testified that the tenants did not clean the rental unit. The landlord stated she was required to clean the kitchen, bathroom, all the blinds, all the windows, all the baseboards, all the floor had to be swept/washed and appliances had to be cleaned. The landlord stated the walls had to be washed twice as they were filthy and smelled like smoke, even though the tenants were not to be smoking the rental unit. The landlord stated it took her 34 hours and seeks to be compensated at the rate of \$16.00 per hour. The landlord seeks to recover the amount of \$544.00.

#### Painting labour

The landlord testified that the tenant caused damage to the walls, as there were two large holes in the drywall that had to be repaired. The landlord stated the tenant attempted to make the repair to one of the holes by filling it with drywall mud, however, that was insufficient as the hole was too big and the drywall needed to be cut and a new piece inserted to properly repair the damage. The landlord stated that she made the repair herself it took her about two hours to cut the drywall, make the necessary patch and complete the sanding. The landlord stated that the unit was also required to be

painted. The landlord stated it took her 20 hours and seeks to be compensated at the rate of \$20.00 per hour. The landlord seeks to recover the amount of \$400.00.

#### Damaged Carpet

The landlord testified the tenants did not clean the carpets at the end of the tenancy and that she had to have them professionally cleaned. The landlord seeks to recover the amount of \$217.92. Filed in evidence is a receipt for cleaning. Filed in evidence are photographs of the carpets.

The landlord testified that the tenant also caused damage to the carpets as there were stains that would not come out and burn marks. The landlord stated she has not had the carpets replaced and has not provided an estimate of the actual cost of the damage. The landlord seeks to recover the amount of \$282.08.

#### Replace Refrigerator

The landlord testified that the tenants broke the freezer on refrigerator as the plastic was broken exposing the elements. The landlord stated she was required to have the refrigerator replaced. The landlord stated the fridge was eight years old at the time. The landlord stated she mitigated her loss as she was able purchase a similar refrigerator second hand and the cost was \$350.00. The landlord stated she is seeking to recover half of that amount in the total amount of \$175.00.

#### Paint and supplies

The landlord testified that she had to buy paint (\$85.05) to repaint the unit and cleaning supplies (\$14.55). The landlord seeks to recover the amount of \$99.60.

#### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;

- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

#### Unpaid rent for July and August 2013

Section 26 of the Residential Tenancy Act states:

*26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The evidence of the landlord was that the tenants did not pay rent for July 2013. I find the tenant have breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for July 2013, in the amount of **\$950.00.**

Section 45 of the Residential Tenancy Act states:

*45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*  
*(a) is not earlier than one month after the date the landlord receives the notice, and*  
*(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement*

In this case, the evidence of the landlord was that on July 15, 2013, she discovered that the tenants were moving their belongings from the rental unit. The evidence of the landlord was the tenants did not provided any notice to end the tenancy and their last of their belongings were removed on or about August 2, 2013, and then rental unit needed to be cleaned.

Under section 45(1) of the Act the tenants were required to provide the landlord with at least one month notice to end the tenancy. I find that the tenants have breached the Act as the earliest date they could have legally ended the tenancy was August 31, 2013.

As a result of the tenants not complying with the terms of the tenancy agreement or the Act the landlord suffered a loss of rent for August 2013, the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenants had not breached the tenancy agreement or Act. This includes compensating the landlords for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy. Therefore, I find the landlord is entitled to recover loss of rent for July 2013, in the amount of **\$950.00**.

### Damages

Under section 37 of the Act, the tenants are required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

### Cleaning labour

The evidence of the landlord was that the tenants did not clean the rental unit. The evidence of the landlord was that she spent 34 hours cleaning, which included the kitchen, bathroom, all the blinds, all the windows, all the baseboards, sweeping and washing all the floor, washing all the walls twice and cleaning the appliances. The photographs submitted supports that the cleaning was required. As a result, I find the tenants breached the Act, when they failed to leave the rental unit reasonably cleaned and this caused losses to the landlord. I find the hourly rate charged by the landlord reasonable. Therefore I find the landlord is entitled to recover cleaning labour costs in the amount of **\$544.00**.

### Painting labour

The evidence of the landlord was that the tenant caused damage to the walls, as there were two large holes in the drywall that had to be repaired. The evidence of the landlord was that the tenant attempted to make the repair to one of the holes by filling the hole with drywall mud, however, that was insufficient as the hole was too big and the drywall needed to be cut and a new piece inserted to properly repair the damage and it took her approximately two hours.

In this case, the landlord photographs submitted in evidence supports that the tenants cause damage to the walls. While the tenant attempted to fill one of the holes with drywall mud, I find that repair to be inadequate as the photograph depicts that the drywall was pushed in from neglect and the portion of the drywall was required to be replaced; the tenant did not attempt to repair the second hole. As a result, I find the tenants breached the Act, when they failed to leave the rental unit undamaged and this caused losses to the landlord. I find the hourly rate charged by the landlord reasonable.

Therefore I find the landlord is entitled to recover cleaning labour costs in the amount of **\$40.00**.

In this case, the landlord is seeking compensation for painting.

Under the Residential Policy Guideline #40, if an item was damaged by the tenant, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement. As, I have determined that the paint had a useful life span of four years, and the paint was approximately six years old at the end of the tenancy, I find that the useful lifespan of the paint had exceeded the useful life span. As a result, I find the landlord is not entitled to labour cost for repainting the unit. This portion of the landlord's claim is dismissed.

#### Damaged Carpet

The evidence of the landlord was that the tenants did not clean the carpets at the end of the tenancy. The photographs submitted by the landlord and the move-out condition inspection report supports the landlords position that the tenants left the carpets dirty at the end of the tenancy. As a result, I find the tenants breached the Act, when they failed to clean the carpets cleaned at the end of the tenancy and this caused losses to the landlord, which is support by a receipt for cleaning. Therefore I find the landlord is entitled to recover carpet cleaning costs in the amount of **\$217.92**.

The evidence of the landlord was that the tenant also caused damage to the carpets as there were stains that would not come out and burn marks. While I accept the landlord's testimony that the tenants cause damage to the carpets, I find the landlord has failed to provided sufficient evidence to support the actual cost of the damage, as the landlord did not provide any estimate or any receipt to support the amount claimed. Therefore, I dismiss this portion of the landlord's claim for compensation.

#### Replace Refrigerator

The evidence of the landlord was that the tenants broke the freezer on refrigerator as the plastic was broken exposing the elements. The photograph submitted as evidence and the move-out condition inspection report supports the landlord position the tenants caused damage to the refrigerate, which the appliance was required to be replaced.

In this case, the landlord took extra step to mitigate the loss, rather than purchasing a new appliance, which the tenant would be responsible to pay the depreciated value the landlord purchased a similar like appliance second hand and seek to recover 50% of that cost. I find the landlord position reasonable as this reduce the cost to each party. Therefore, I find the landlord is entitled to compensation for half of the purchase price of the refrigerator in the amount of **\$175.00**.

### Paint and supplies

The evidence of the landlord was that she had to buy paint in the amount of \$85.00 to paint the unit. However, as I have previously found the useful life of the paint had been exceeded the landlord is not entitled to compensation for the paint.

The evidence of the landlord was that she had to buy cleaning supplies in the amount \$14.55 to clean the unit, which is supported by a receipt. As I have previously found the tenants breached the Act, when they failed to clean the rental unit, I find the landlord suffered a loss as they were required to purchase cleaning supplies. Therefore, I find the landlord is entitled to compensation for cleaning supplies in the amount of **\$14.55**.

I find that the landlord has established a total monetary claim of **\$2,941.47** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$475.00** and interest of **\$7.75** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$2,458.72**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The landlord is granted a monetary and may keep the security deposit and interest in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: November 27, 2013

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Residential Tenancy Branch

