



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damage to the unit, site or property, for authority to keep all or part of the security deposit or pet damage deposit, for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement, for unpaid rent or utilities, and to recover the filing fee.

The landlord and tenant, MM, who was representing both tenants at the hearing, appeared at the teleconference hearing and provided affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the testimony and documentary evidence is provided below and includes only that which is relevant to the matters before me.

Both parties confirmed that they received evidence from the other party and that they had the opportunity to review that evidence prior to the hearing, with the exception of the tenancy agreement which the tenant stated she did not receive a copy of in the landlord’s evidence or previously from the landlord during the tenancy. The tenant stated that she was comfortable proceeding without the tenancy agreement before her, and as a result, I accept that the parties were sufficiently served under the *Act*.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants’ security deposit under the *Act*?

### Background and Evidence

The written tenancy agreement submitted in evidence indicates that a fixed term tenancy began on December 1, 2010, and reverted to a month to month tenancy after December 31, 2011. The parties disputed the possession date of the rental unit. The tenant stated that the tenants received possession of the rental unit on December 4, 2010, while the landlord stated that the tenants had possession of the rental unit as of December 1, 2010. Monthly rent in the amount of \$1,600.00 was due on the first day of each month. A security deposit of \$800.00 and a pet damage deposit of \$400.00 were paid by the tenants at the start of the tenancy, which the landlord continues to hold.

The landlord has applied for a monetary claim in the amount of \$1,485.58 comprised of the following:

Item #1. Housing cleaning inside	\$200.00
Item #2. Yard cleanup	\$165.00
Item #3. Carpet cleaning	\$90.00
Item #4. Damage to linoleum and weather stripping	\$150.00
Item #5. Replacement of deadbolt and stove bowls	\$80.58
Item #6. Secondary floor cleaning required	\$100.00
Item #7. Plant/tree/shrub trim/disposal	\$150.00
Item #8. 11 days loss of rent July 16 to July 26, 2013	\$550.00
<b>TOTAL</b>	<b>\$1,485.58</b>

### Settlement Agreement

During the hearing, the parties mutually agreed to settle on two of the items described above. Regarding item #3 where the landlord has claimed \$90.00 for carpet cleaning, the parties agreed that the tenants will pay the landlord \$90.00 for carpet cleaning. Regarding item #5, replacement of deadbolt and stove bowls, the landlord claimed \$80.58 for both items and the parties agreed that the tenants will pay the landlord \$14.98 for the deadbolt and \$31.90 for the stove bowls for a total of \$46.88 for the deadbolt and the stove bowls.

### Remainder of Items

Item #1 - The landlord has claimed \$200.00 for cleaning of the inside of the rental unit. The tenant testified that she agreed with the incoming condition inspection report and

that the rental unit was in good condition at the start of the tenancy. There was a dispute regarding the outgoing condition inspection report. The landlord stated during the hearing that the outgoing condition inspection report was signed by the new renters who moved into the rental unit after the tenants vacated on July 15, 2013. The outgoing condition inspection report is dated July 16, 2013 which is after the date the parties agreed was the end of the tenancy date, July 15, 2013.

The tenant stated that the house was left reasonably clean when the tenants vacated the rental unit. The landlord referred to a July 28, 2013 letter submitted in evidence in support of the \$200.00 paid to a third party to clean the rental unit. The name on the letter is not clear and the letter makes reference to all of the areas in the rental unit that required cleaning and reads in part "...This cleaning took me the entire day and I charged [name of landlord] \$200.00 for this service. I was paid in full by cheque#196." Cheque #196 was not submitted in evidence.

The landlord referred to photos in the "floor" section of the landlord's evidence on pages numbers 19 to 26 to support that the rental unit was not left in a reasonably clean condition. The tenant referred to photos 65, 66 and 67 in the tenants' evidence and photos 4 to 8 which the tenant stated were taken at the end of the tenancy. The tenant stated that "the house was in such a bad state of repair that you can only do so much to clean it up". The landlord stated that house was between 60 and 65 years old, while the tenant claims the house was at least 100 years old. Neither party provided documentary evidence to support the age of the home.

Item # 2 – The landlord has claimed \$165.00 for yard cleanup. The landlord confirmed that he did not provide any photos of the yard at the start of the tenancy, and the tenant did not agree to any of this portion of the landlord's claim. The landlord referred to a written document dated July 25, 2013, which reads in part that a third party, PB, performed yard clean up and garbage clean up from the rental unit yard on July 22, 23, and 25, 2013 and that the total cost of \$165.00 includes "labour and refuse dump". The landlord referred to photos submitted in evidence and referred to the tenancy agreement submitted in evidence which reads, "Tenant responsible for yard maintenance". The landlord did not include details of what yard maintenance includes in the tenancy agreement and there is no addendum to the tenancy agreement setting this out.

Item #4 – The landlord has claimed \$150.00 for damage to the rental unit linoleum and weather stripping. During the hearing, the landlord stated that the amount of \$150.00 also included drywall repair as well. The landlord referred to a cheque submitted in evidence in the amount of \$150.00 to third party, RA. The cheque submitted in

evidence, cheque #198, does indicate an amount of \$150.00. A note written on the cheque indicates "Lino, weatherstrip, drywall work" [reproduced as written] and the address of the rental unit and is signed by the landlord, PC. The landlord confirmed that there was no statement from the person who performed the work, RA. The landlord referred to a photo submitted in evidence which shows a hole in the drywall, and the tenant stated that the hole was already there at the start of the tenancy. The tenant did acknowledge during the hearing that the weather stripping did look worn in the photos provided by the landlord.

The landlord stated that the linoleum in the photos submitted in evidence was replaced within five years of him purchasing the home, which would make the linoleum approximately eight years old as the tenant moved into the rental unit in December 2010, which is about three years ago. However, the landlord acknowledged that he did not submit any documentary evidence to prove the age of the linoleum in evidence. The landlord did not submit any photos in evidence after the linoleum was repaired. The tenant did not agree to having caused damage to the linoleum.

Item #6 – The landlord has claimed \$100.00 for a secondary cleaning of the flooring. The landlord stated that after the tenants vacated the rental unit, the flooring smelled like pet urine, not in the carpet but in the linoleum and laminate flooring. The landlord did not submit a receipt in evidence in support of this portion of his claim. The landlord referred to a document which makes reference to cheque #197 dated July 27, 2013. The document referred to by the landlord is from a numbered company and not the landlord. The tenant disputed that the floors smelled like pet urine.

Item #7 – The landlord has claimed \$150.00 for plant/tree/shrub trim/disposal. The landlord referred to the same document described in item #6 above in addition to a receipt submitted in evidence in the amount of \$34.00 indicating the city name and "LANDFILL" which was paid by Visa on July 26, 2013. The tenant disputed this portion of the landlord's claim by stating that the tenancy agreement did not require hedging or pruning as part of the tenancy agreement.

Item # 8 – The landlord has claimed \$550.00 for 11 days loss of rent between the dates of July 16, 2013 to July 26, 2013. The landlord testified that the new tenants moved into the rental unit on July 27, 2013 and that the landlord is seeking the loss of rent for the dates of July 16, 2013 to July 26, 2013 inclusive due to the late notice provided by the tenants. The tenant stated that tenants had a verbal agreement with the landlord, which the landlord denied making with the tenants during the hearing. The written notice from the tenants dated June 3, 2013 was submitted in evidence. In the written notice the tenants request permission from the landlord that they be given permission to vacate by

July 15, 2013 and included half a month's rent for July 2013. In the same letter, the tenants write "...if you so require that we pay July's rent in full, please return the cheque in your possession and we will provide you with another for the full amount, and we will give you the keys back on July 31, 2013."

### Analysis

Based on the documentary evidence, the testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

**Item #1** - The landlord has claimed \$200.00 for cleaning of the inside of the rental unit. The tenant testified that she agreed with the incoming condition inspection report and that the rental unit was in good condition at the start of the tenancy. There was a dispute regarding the completion of the outgoing condition inspection report. The landlord stated during the hearing that the outgoing condition inspection report was signed by the new renters who moved into the rental unit after the tenants vacated on July 15, 2013. The outgoing condition inspection report is dated July 16, 2013 and was signed by the new renters which I find is not in accordance with section 35 of the *Act*. In the future, the landlord should have the appropriate tenants sign the condition

inspection report and if they refuse to sign it, indicate that the tenants refused to sign the outgoing condition inspection report. Having different renters sign the reports does not comply with the *Act*.

The tenant stated that the house was left reasonably clean when the tenants vacated the rental unit. The landlord disputed the testimony of the tenant and referred to a July 28, 2013 letter submitted in evidence. The name on the letter is not clear and reads in part "...This cleaning took me the entire day and I charged [name of landlord] \$200.00 for this service. I was paid in full by cheque#196." Cheque #196 was not submitted in evidence.

Both parties referred to photos to support their position regarding this item and the parties disputed the age of the home also. Neither party provided documentary evidence to support the age of the home. Based on the above, **I find** that the landlord has insufficient evidence to support this portion of this claim. The landlord's photos and the tenant's photos are contradictory in nature regarding the condition of the rental unit and the burden of proof is on the landlord to prove that the rental unit was not left in a reasonably clean condition. The photos provided by the tenant show what I consider to be a reasonably clean rental unit and there were no photos submitted in evidence which show the rental unit prior to the tenant moving in. As a result, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

**Item # 2** – The landlord has claimed \$165.00 for yard cleanup. The landlord confirmed that he did not provide any photos of the yard at the start of the tenancy, and the tenant did not agree to any of this portion of the landlord's claim. The landlord referred to a written document dated July 25, 2013, which reads in part that a third party, PB, performed yard clean up and garbage clean up from the rental unit yard on July 22, 23, and 25, 2013 and that the total cost of \$165.00 includes "labour and refuse dump". The landlord referred to photos submitted in evidence and referred to the tenancy agreement submitted in evidence which reads, "Tenant responsible for yard maintenance". At the very least, for this term of the tenancy agreement to be enforceable, the landlord should have defined what yard maintenance required at the start of the tenancy. As a result, **I dismiss** this portion of the landlord's claim due to the vagueness of the term of the agreement, without leave to reapply.

**Item #4** – The landlord has claimed \$150.00 for damage to the rental unit linoleum and weather stripping. The tenant did acknowledge during the hearing that the weather stripping did look worn in the photos provided by the landlord.

The landlord stated that the linoleum in the photos submitted in evidence was replaced within five years of him purchasing the home, which would make the linoleum approximately eight years old as the tenant moved into the rental unit in December 2010, which is about three years ago. Based on the above, **I find** that the tenant did acknowledge that the weather stripping did look worn and that the amount being claimed for the weather stripping and linoleum damage are reasonable. Therefore, **I find** the landlord has met the burden of proof and is entitled to **\$150.00** in compensation for damage to the rental unit weather stripping and the linoleum.

**Item #6** – The landlord stated that after the tenants vacated the rental unit, the flooring smelled like pet urine, not in the carpet but in the linoleum and laminate flooring. The tenant disputed that the floors smelled like pet urine. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. As the landlord has the burden of proof to prove their monetary claim, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

**Item #7** – Consistent with my finding above regarding item #2, the landlord did not include details of what yard maintenance was required in the tenancy agreement and there is no addendum to the tenancy agreement, **I accept** the tenant's statement that the tenancy agreement did not require hedging or pruning. As a result, **I dismiss** this portion of the landlord's claim due to insufficient evidence and vagueness of the tenancy agreement, without leave to reapply.

**Item # 8** – The landlord has claimed \$550.00 for 11 days loss of rent between the dates of July 16, 2013 and July 26, 2013. Section 45 of the *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.**

(4) A notice to end a tenancy given under this section **must comply with section 52** *[form and content of notice to end tenancy]*.

**[emphasis added]**

Based on the above, **I find** the tenants breached section 45 of the *Act* by failing to provide proper written notice under the *Act*, and that by giving notice on June 3, 2013, the earliest date that the tenants' written notice would become effective, would be July 31, 2013. There was no dispute that the first half of July 2013 rent of \$800.00 was paid by the tenants.

Section 7 of the *Act* requires that a landlord do whatever is reasonable to minimize the damage or loss, and **I find** the landlord complied with section 7 of the *Act* by arranging for new renters to move into the rental unit effective July 27, 2013, as the tenants vacated the rental unit on July 15, 2013. Therefore, **I find** the landlord has met the burden of proof and is entitled to compensation in the amount of **\$550.00 as claimed** for the 11 days between July 16, 2013 and July 26, 2013 inclusive. I note that monthly rent was \$1,600.00 per month and that there was 31 days in July 2013, resulting in a daily rent amount of \$51.61 per day, which if multiplied by 11 days would total \$567.71. As a result, **I find** the \$550.00 loss of rent claimed by the landlord to be reasonable.

The landlord has established a monetary claim as follows:

Item #3. Carpet cleaning <b>via mutual agreement described above</b>	\$90.00
Item #4. Damage to linoleum and weather stripping	\$150.00
Item #5. Replacement of deadbolt and stove bowls <b>via mutual agreement described above</b>	\$46.88
Item #8. 11 days loss of rent from July 16, 2013 to July 26, 2013	\$550.00
<b>TOTAL</b>	<b>\$836.88</b>

As the landlord was successful with the majority of their claim, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**. The landlord continues to hold the tenants' security deposit of \$800.00 and pet damage deposit of \$400.00 which has accrued \$0.00 in interest to date.

**Monetary Order** – **I find** that the landlord has established a total monetary claim in the amount of **\$886.88** comprised of \$836.88 for items 3, 4, 5 and 8, plus the \$50.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit and pet damage deposits (the "deposits") which together total \$1,200.00. **I authorize** the landlord to retain **\$886.88** of the tenant's \$1,200.00 in deposits in full satisfaction of the landlord's claim, and I **ORDER** the landlord to immediately return the tenants' deposits balance owing of **\$313.12**. Should

the landlord fail to comply with my order, I **grant** the tenants a monetary order under section 67 in the amount of **\$313.12**. Should the tenants have to enforce the monetary order, the monetary order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The landlord has established a total monetary claim in the amount of \$886.88. The landlord has been authorized to retain \$886.88 of the tenant's security deposit and pet damage deposit which combined total \$1,200.00 in full satisfaction of the landlord's claim.

The landlord has been ordered to immediately return the tenants' security deposit and pet damage deposit total balance owing of \$313.12. Should the landlord fail to comply with my order, the tenants have been granted a monetary order under section 67 in the amount of \$313.12. Should the tenants have to enforce the monetary order, the monetary order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 21, 2013

---

Residential Tenancy Branch

