



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, MND, MNDC, FF

### Introduction

This in person hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Landlord applied on August 29, 2013 for:

1. A Monetary Order for damage to the unit – Section 67;
2. A Monetary Order for unpaid rent – Section 67;
3. A Monetary Order for compensation – Section 67;
4. An Order to retain all or part of the security deposit – Section 38;
5. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on June 13, 2011 for:

1. A Monetary Order for compensation or loss - Section 67;
2. An Order for the return of the security deposit – Section 38;
3. An Order for the return of the Tenant’s property – Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity to be heard, to present evidence and to make submissions under oath

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

### Background and Evidence

The tenancy started on February 1, 2011 for a one year term and on August 1, 2012 the Parties entered into a second one year term to end on July 31, 2013. Rent of \$2,700.00 was payable monthly and at the outset of the tenancy the Landlord collected \$1,350.00 as a security deposit. The Parties mutually conducted a move-in inspection and report. No move-out inspection was done and the Parties each state that the other Party would not respond to calls after the Tenants moved out of the unit.

The Landlord states that after a meeting with the Tenants on May 10, 2102 to discuss unit issues the Tenants moved out of the unit without any notice to the Landlord. The Landlord states that rental ads were placed at the end of July 2012 and that a new tenancy was started for August 1, 2013. The Landlord states that the unit could not be advertised sooner as significant repairs were required. The Landlord states that the Tenants' rent cheques for June and July 2013 were returned NSF. The Landlord claims \$5,400.00 in unpaid rent and lost rental income. The Tenants do not dispute that no notice was given to the Landlord and that no rent was paid for June and July 2013.

The Tenant states that they moved out of the unit on May 27, 2013. The Tenants states that the unit was infested with rodents from the onset of the tenancy and that they asked the Landlord to fix this problem at the signing of the second lease. The Tenant states that the Landlord told the Tenants that they agreed in the tenancy agreement to be responsible for the removal of rodents and for the first year the Tenants did set traps and take additional measure to rid the rodents but that in the spring of 2013 the infestation became very bad, being seen repeatedly on a daily basis running across the unit and they wanted the Landlord to address the problem but he refused. The Tenants state that they had a small child and were expecting and that when their mother, a respiratory therapist came to visit, they were informed of significant dangers of the infestation for the children. The Tenants said that their mother told them that the danger was so bad that they needed to move out immediately. The Tenant's provided a letter from the mother. The Tenants state that movers had to be hired, that the moving

expense was not budgeted and claims the cost of \$450.00 for the movers. The Tenants also claim \$12,000.00 calculated at \$1,000.00 per month for 10 months for having to live with the infestation.

The Landlord states that the first he heard of rodents was on May 10, 2013 and that nothing was done as the Landlord wished to continue discussing the issue with the Tenant. The Tenant states that the Landlord knew the unit was infested from the outset of the tenancy as the tenancy agreement included for the Tenant's removal of "wild critters" and that at move-in there was a high frequency sound device plugged into the stove as shown in the Landlord's photos. The Landlord states in response that there are sometimes mice in the house which is why the Landlord never requires a pet deposit for a cat. The Landlord states that the Tenants were told at the time of signing the tenancy agreement that from time to time wild critters would be present, including raccoons which would climb on the roof and cause damages. The Tenant states that the Landlord did not mention mice. The Landlord states that he believes that the Tenants moved as they wanted a different location for the home based business and that they only told the Landlord of the infestation in May 2013 in preparation for their move-out. The Tenant states that the business is internet based and that customers are not given the business home address on the web. The Tenant states that he also teaches guitar at home and that the Landlord was aware of this at the outset of the tenancy.

The Tenant states that the rent was increased by \$50.00 per month on the signing of the second tenancy without any notice of rent increase being provided to the Tenants in advance of the rent increase. The Tenant claims the return of the extra rent paid in the amount of \$500.00. The Landlord states that the Tenants were verbally informed in May 2012 about the increased rent that would come into effect for the August 1, 2012 lease renewal.

The Tenant states that following the end of the tenancy the Landlord's actions in relation to the removal guitars that involved the police and the delivery company's security

officers and the Landlord's refusal after to communicate with anyone caused the Tenant to lose three weeks work and caused significant stress. The Tenant claims \$10,000.00 for stress and harassment.

The Landlord states that the Tenants left the unit unclean and damaged and claims as follows:

- \$180.00 in compensation for the loss of a chandelier missing at the end of the tenancy. The Landlord states that the amount claimed is the original purchase price in 1968. The Tenant states that this light fixture was attached by a fishing line and that it fell and nearly hit their child in February 2013. The Tenant states that the Landlord was informed of this during their meeting in May 2013 when the Tenants asked for a new light fixture;
- \$130.00 for the cost to replace four year old cloth curtains missing from a bedroom, burnt out light bulbs, and back door blinds. The Landlord did not provide receipts. The Tenant states that the curtains are still in the unit but were moved into the living room and that the blinds are in the basement on the shelf. The Tenant provided a copy of a video of the unit. The Tenant does not dispute \$25.00 for the cost of the light bulbs;
- \$1,423.51 for the cost of refinishing the hardwood flooring throughout the unit. The Landlord states that the floors had been refinished a month prior to the start of this tenancy. The Landlord states that the Tenants left the floor with gouges and provided photos of the floors. The Landlord states that the front entrance in particular was damaged from the walk-in business that the Tenant operated out of the front area. The Tenant states at move-in it appeared that pre-existing cracks had been filled in with putty or something and that this started to fall out during the tenancy. The Tenant states that the floors were only used normally for walking on;
- \$5,640.00 for the costs to repair and clean the unit. The Landlord states that this amount is discounted by half of the actual costs. The Landlord states that he did the repairs and cleaning and estimates the allocation of the costs at a rate of

\$30.00 per hour as follows: Over 100 hours to repair and paint the walls that were left chipped and nicked in every room, 10 hours to repair three window frames that were cracked, 3 hours to repair a wooden air vent, 100 hours to clean the 3 bedroom unit that had not been cleaned at all, 40 hours to clean the back garden including dealing with a fallen tree and filling holes, 5 hours to clean the garden shed, and significant time sanitizing the entire unit, including floors, cupboards and pantry. The Landlord states that the walls had been painted at the outset of the tenancy. The Landlord states that this amount includes \$120.00 and \$60.00 paid to remove tires and rubbish left behind by the Tenant. The Landlord states that he is not certain that all of the tires belonged to the Tenants and that some of the rubbish included materials left in the garden shed from a previous tenant.

The Tenant agrees that the front bedroom walls, an area of approximately 120 square feet, were damaged by several screw holes. The Tenant states that there were no damages beyond reasonable wear and tear to the rest of the walls. The Tenant states that the Landlord's photo's of articles left behind were mostly items that were not the Tenant's. The Tenant states that the Landlord was witnessed piling rubbish in the parking lot next door and that it was left for the owner of that building. The Tenant states that their garbage was left in the garbage and recycling containers. The Tenant states that the window frames were in poor shape, some windows would not close and some were painted shut. The Tenant states that the wooden air vent had a piece missing prior to their tenancy as shown by the Landlords' own photos of the unit before their tenancy. The Tenant agrees that the unit was not cleaned on the date they moved out, May 27, 2013 and that they intended to return to clean the unit but states that the Landlord entered the unit on May 31, 2013, took delivery and kept the Tenant's business product (custom made guitars). The Tenant states that after this occurred the Landlord would not respond to the Tenant's calls. The Tenant states that the business product has since been returned by the Landlord. The Tenant states that the yard was maintained and seeded regularly , that at move-in the lawn was a mud hill and uneven

as shown in the Landlord's photo's of prior to the tenancy. The Tenant states that the unit required sanitizing by the Landlord as it was infested with rodents.

The Tenant states that the tenancy ended due to the rodent infestation and as the Landlord refused to do anything about it. The Tenant states that with a small child crawling around they were concerned about health problems. The Landlord states that the rodent problem was caused by the Tenants leaving bird seed outside.

The Landlord states that the tenancy agreement provides the Tenants with a \$900.00 rental discount for landscaping, gardening and step/fence painting by the Tenants. The Landlord states that none of this was done and claims return of the discount in the amount of \$900.00. The Tenant states that although he knew he was expected to paint the steps or the fence this could not be done as the wood was rotten and cracked. The Tenant provided photos. The Tenant states that the yard was maintained and provided a witness letter of the state of the yard during the tenancy;

The Landlord states that during the tenancy the Tenants obtained a pet and claims \$1,350.00 for a pet deposit.

The Landlord states that a large collection of items were stored at the rental unit for the Landlord's use that were extremely valuable, some having been made by the Landlord's mother, irreplaceable and that as the cost of insurance would be prohibitive, no insurance was obtained for these items. The Landlord states that the storage is separate, under a bedroom and closed to the outside. The Tenant states that the Landlord's storage area that was open to the outside and connected through a storage shed that did not close. The Tenant states that there were also pools of water and areas of mold in the storage.

The Landlord claims the following for the loss of items stored by the Landlord:

- \$400.00 for a ceramic vase. The Tenant states that no vase was ever seen in the Landlord's storage area;
- \$4,000.00 for an antique stove, over 100 years old, stored in the basement. The Landlord states that the amount claimed is based on estimates of worth. The Tenant states that he has no idea what happened to the stove, that it was very heavy, would require movers and was covered with linoleum on top. The Landlord states that the basement door was off the hinges and the nearby folding door was also damaged indicating the move of the stove from the basement. The Landlord states that he noticed it missing sometime in June 2013;
- \$4,000.00 for a carpet that was rolled, wrapped and stored in a water proof package. The Landlord states that the carpet was very valuable having been made in the 1950's. The Tenant states that the carpet should still be there and that the Landlord has likely not looked for it. The Tenant states that they would not want this carpet in any event as it was covered in moisture and rodent feces.

The Landlord states that after the end of the tenancy a window of the unit was damaged by a third party while the Tenant was present and for which the police states the incident was reported as an accident. The Landlord claims \$132.00. The Tenant denies liability for the claim and states that the window broke while the third party was knocking on it.

The Landlord states that the tenancy agreement provides for the Tenant to pay for city services to the unit such as sewer, water, garbage and recycling collection and claims \$930.00. The Landlord states that this amount forms part of the Landlord's tax bill. The Landlord states that the Tenants have not paid the gas charges to the end of the lease and claims \$34.68 for the costs incurred while the Landlord cleaned and repaired the unit. The Landlord states that he has no bill for this and does not know why he was charged this amount but that the gas company called him and told him to pay this amount. The Tenant states that their gas account was ended with the company at the end of May 2013 and that there is no bill from the Landlord to respond to.

The Tenant does not dispute the Landlords claims for \$30.00 for the cost of a pantry ladder, \$11.61 of the cost of a key, \$25.00 for the cost of light bulbs

### Analysis

Section 7 of the Act provides that where a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the landlord or tenant must compensate the other party for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Given the Landlord's acknowledgement of the presence of mice from time to time and considering the provision for "wild critters" in the tenancy agreement, I find on a balance of probabilities that the Landlord knew that the unit was infested with rodents from the onset of the tenancy. As the Act requires a landlord to maintain a unit, including the maintenance of a rodent free unit, I find that the tenancy agreement provision requiring the Tenant to so maintain the unit to be contrary to the Act, unconscionable and therefore of no effect in limiting the Landlord's obligations to provide and maintain a rodent free rental unit. Accepting that the Landlord did nothing to address the infestation and was again informed on May 10, 2013 of the problem and did nothing to act, I find that the Tenants were justified in ending the tenancy. I therefore find that the Tenants are entitled to **\$450.00** in moving costs. As no evidence was provided to substantiate any other costs incurred by the presence of the rodents, I dismiss the remaining claim for 10 month rental compensation.



Section 41 of the Act provides that a Landlord may not increase rent except in accordance with the Act. Section 42 of the Act provides that a landlord must give a tenant notice of a rent increase in the approved form and at least three months before the effective date of the increase. Section 5 of the Act provides that a landlord may not contract out of the provisions of the Act and any attempt to do so is of no effect. Based on the evidence of the Landlord that only verbal notice was given of a rent increase that would be effective upon signing the second lease, I find that the Tenants have substantiated that the rental increase of \$50.00 was of no effect and that they are therefore entitled to the rental increase paid in the amount **\$500.00**. Given that the Landlord's actions complained of by the Tenant occurred after the end of the tenancy and were not in relation to the tenancy, I dismiss the Tenant's claim for compensation for stress and harassment.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Given the photos of both the Tenant and the Landlord and considering the Landlord's evidence that work to the unit was done by the Landlord, I find that the Tenant's evidence of the placement of the chandelier by wire and its ensuing drop to be persuasive. As a result, I find that the Landlord has not substantiated that the Tenant caused the loss of the chandelier and I dismiss this claim.

Given the lack of receipts for the costs claimed to replace the curtains and blinds but considering the Tenant's agreement for the cost of the light bulbs, I find that the Landlord has not substantiated the costs claimed other than **\$25.00** and I dismiss the remaining claim.

Given that the Landlord's photos of the floors are taken after the repairs were made and show no damage to the floors, I find that the Landlord has not substantiated that the floors were damaged by the Tenant to the extent that refinishing was required and I dismiss this claim. Given the photo and video evidence of both Parties, I find that the unit was not cleaned at move-out and that the walls were undamaged except for the front room where plywood had been placed on the walls. As the Landlord's evidence in relation to the allocation of costs is not clear or obvious, I find that the Landlord has only substantiated a global award of **\$500.00** for the cleaning of the unit and the patching, sanding and painting of the one room. Given the Landlord's evidence that not all of the items left behind and taken to the trash was the Tenant's nor did all the items in the shed belong to the Tenants, I dismiss the costs for rubbish gathering and removal and shed cleaning. Given the Tenant's evidence of the state of the garden and considering the Landlord's evidence of a fallen tree, I find that the Landlord has not substantiated that Tenant caused the damages or the costs claimed and I dismiss the claims for these items. Accepting that there was an infestation and that the Landlord failed to remedy this infestation, I find that the Landlord is responsible for the costs of sanitizing the unit and I dismiss this claim.

Given the Tenant's witness evidence of the state of the yard during the tenancy, and accepting that the fence and stairs were significantly damaged by apparent age, I find that the Landlord has failed to substantiate that the Tenant breached its obligations to maintain the yard and I dismiss the Landlord's claim for the \$900.00.

As the Tenants left the unit unclean and damaged I find that the Landlord would reasonably have lost rental income however not to the extend claimed as the Landlord failed to advertise the unit until the end of July 2013 and therefore failed to take reasonable measures to mitigate losses beyond the time it would have taken to clean and make repairs. I find therefore that the Landlord has substantiated a reasonably expected loss of **\$1,325.00**. This amount reflects a half month at the rental rate prior to the increase of \$50.00.

A pet deposit is only payable at the outset or during a tenancy. As the tenancy is over I dismiss the Landlord's claim for a pet deposit.

Although the Landlord states that the items missing from storage at the unit were collectables and of great value, given that these items were left in the rental unit and were not insured, I find that the Landlord has acted in a manner that conflicts with such claimed worth. As a result, I dismiss the Landlord's claim for compensation for items that may or may not have been in the unit after the end of the tenancy.

As the incident in relation to the broken glass involved a third party and occurred after the end of the tenancy, I find that the Landlord has failed to substantiate that the Tenant caused the loss claimed and I dismiss the claim for \$132.00.

Given that the Landlord claims costs that are part of the Landlord's taxes on the property and considering that such costs would be reasonably expected to have been built into the rent amount charged, I find that the Landlord has not substantiated that the Tenant is responsible for any portion of the Landlord's taxes and I dismiss this claim for \$930.00. As the Landlord provided no receipt or rationale for the utility amount claimed, I find that the Landlord has failed to substantiate the costs claimed and I dismiss the claim for unpaid utilities.

Given that the Tenant does not dispute the Landlord's claims for the cost of a pantry ladder, the cost of a key, and the cost of light bulbs, I find that the Landlord has substantiated an entitlement to **\$66.61** as claimed.

The Landlord has been found to be entitled to a total of **\$1,916.61**. As the Landlord's application has met with limited success, I decline to award recovery of the filing fee. As the Landlord still holds the security deposit of **\$1,350.00** plus zero interest, I order the Landlord to retain this amount leaving **\$566.61** owed by the Tenants. The Tenants have been found entitled to **\$950.00**. As the Tenant's application has also met with

limited success, I decline to award recovery of their filing fee. I deduct the **\$566.61** from the Tenants entitlement leaving **\$383.39** remaining and owed to the Tenants.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$1,350.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$383.39**. If necessary, this order may be filed in the Small Claims Court and enforced as an order 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: January 2, 2013

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Residential Tenancy Branch

