



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code 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 tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the 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 on October 16, 2013, and were received by the tenant on October 21, 2013. A Canada post track history was provided as evidence of service. I find that the tenant has 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.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### 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 July 1, 2012. Rent in the amount of \$750.00 was payable on the first of each month. A security deposit of \$375.00 and pet damage deposit of \$100.00 were paid by the tenant. The tenancy ended on October 1, 2013. A move-in and move-out condition inspection report was completed.

The landlord claims as follows:

a.	Cleaning	\$ 483.00
b.	Painting and wall repair	\$ 1,716.75
c.	Replace Kitchen linoleum	\$ 735.81
d.	One day rent for late move-out	\$ 24.19
e.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$ 3,009.75</b>

At the outset of the hearing the landlord indicated that they were able to perform a lot of the work and as a result of that they seek to reduce their total claim to \$2,667.87.

#### Cleaning

The landlord testified that the tenant failed to clean the rental unit and that they spent 17.25 hours cleaning. The landlord stated the bathroom was only partially cleaned as there was lots of dust in the cabinet and stains under the sink and some small stains on the walls. The landlord stated the refrigerator, stove were required to be cleaned, and the appliance had to be pulled out and cleaned underneath to remove all the cat hair. The landlord stated all the floors required vacuuming and washing to remove the cat hair and stains. The landlord stated that they seek to recover the labour that they performed at the rate of \$20.00 per hour for the total amount of \$345.00. Filed in evidence are digital photographs of the rental unit.

#### Painting and wall repair

The landlord testified that the rental unit was last painted in June 2012 and there were no dents or scrapes in the walls. The landlord stated at the end of the tenancy there were lots of dents and damage to the walls due to the tenant piling things up against the walls. The landlord stated that the pony wall and window casing had lots of scratches from the tenant's cat. The landlord stated he had to fill all the dents, scratches, and had to sand paint them. Filed in evidence are digital photographs of the walls and window casings. The landlord seeks to recover the labour that and the cost for paint and supplies in the amount of \$1,512.87.

Replace kitchen linoleum

The landlord testified that the tenant caused damaged the linoleum floors as there were holes in the linoleum. The landlord stated that they replaced the floor as it was more cost effective than trying or repair the holes. The landlord stated the floors were approximately seven years old at the end of the tenancy. Filed in evidence are digital photographs of the floor, which depict several holes in the linoleum floor. Filed in evidence is receipt for the replacement of the floor. The landlord seeks to recover the amount to \$735.81.

One day rent for late move-out

The landlord testified that the tenant did not vacate the rental unit on the last day of September and overheld in the premises for one day. The landlord seeks to recover rent on a per diem basis for the one day the tenant was in possession of the rental unit in the amount of \$24.19.

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 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

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.

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord(s) 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

Based on the undisputed testimony of the landlord and the digital photographs submitted as evidence, I find the tenant did not clean the unit to a reasonable standard, and this has caused losses to the Landlord. The landlord is claiming the amount of \$345.00 for the 17.25 hours they spent cleaning, I find that amount reasonable. Therefore, I find the landlord is entitled to recover the cost of cleaning in the amount of **\$345.00**.

### Painting and wall repair

Based on the undisputed testimony of the landlord, and the digital photographs submitted as evidence, I find the tenant caused damage to the walls, and window casing as there are an excessive amount of dent and cat scratches. I find the damage was not caused by wear and tear, rather I find the damage was caused by the action or neglect of the tenant. I find the tenant breached the Act when they failed to make the necessary repair at the end of the tenancy and this caused losses to the landlord.

In this case, the evidence of the landlord was that it took him 58.5 hours to make the repairs to the walls, and window casing, as the holes, dents and scratches needed to be filled, sanded and painted. I find the landlord is entitled to recover the full amount of the labour that he was required to perform to make the necessary repairs. Therefore, the landlord is entitled to recover the amount of **\$1,170.00**.

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 year, and the paint was 17 months old, the landlord is entitled to recover the depreciated value of 65 percent.

Based on the documentary evidence submitted, the receipts, the landlord paid \$270.98 for paint and supplies. Therefore, I find the landlord is entitled to compensation to recover the depreciated value of the paint and supplies in the amount of **\$176.13**.

I note the landlord submitted receipt for silicone, for a curtain rod, and an oak replacement transition strip. However, these were not items were not listed in the monetary order worksheet. Therefore, these receipts were not considered.

Replace kitchen linoleum

Based on the undisputed testimony of the landlord, the digital photographs submitted as evidence, and the move-in condition inspection report, I find the tenant caused damage to the floors as there is several holes in the linoleum that were not there at the start of the tenancy. I find the tenant breached the Act when they failed to make the necessary repair to the floor at the end of the tenancy and this caused losses to the landlord.

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 linoleum floor had a useful life span of ten years, and the floor was seven years old, the landlord is entitled to the depreciated value of thirty percent. The evidence of the landlord was it cost \$735.81 to replace the floor. Therefore, I find the landlord is entitled to compensation for recover the depreciated value of the floor in the amount of **\$220.74**.

One day rent for late move-out

Under section 44 of the Act, a tenant is not liable to pay rent after a tenancy has ended, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises.

In this case the tenancy legally ended on September 30, 2013, however, the landlord did to recover possession of the premises until October 1, 2013, from the tenant..., I find the tenant breached the Act, when they failed to return possession of the premise to the landlord on September 30, 2013 and this caused the tenant to overhold the premises for one day. I find the landlord is entitled to recover occupation rent on a per diem basis in the amount of **\$24.19**.

I find that the landlord has established a total monetary claim of **\$1,986.06** 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 **\$375.00** and pet damage deposit of **\$100.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,511.06**.

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 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: January 30, 2014

---

Residential Tenancy Branch

