



# 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 a landlord's application for a Monetary Order for damage to the property; unpaid rent or utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit and pet damage deposit. The landlord and the female tenant appeared at the hearing.

Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party. As both parties confirmed receipt of the other's evidence I have considered all of the evidence presented to me in making this decision.

### Procedural and Preliminary Matters

The Act provides that the applicant serve each respondent with the hearing documents. Where a respondent does not appear at the hearing, the applicant bears a burden to prove all respondents were sufficiently served. The landlord had named two tenants in filing this application but sent only one registered mail package to the both tenants. The female tenant received the landlord's hearing documents, provided written submissions, and appeared at the hearing. The male tenant did not appear at the hearing and did not provide any written submissions. As such, I was satisfied the female tenant was sufficiently served with notification of the landlord's claims but I was unsatisfied the male tenant was sufficiently served. Therefore, I have excluded the male tenant as a respondent and he is not named on this decision.

The landlord has already been provided a Monetary Order under a previous dispute resolution proceeding for unpaid rent for the month of September 2013. I noted that the landlord included unpaid rent for September 2013 in filing this monetary claim. A party may not claim the same amount twice and the claim for unpaid rent for September 2013

was excluded from this application. Should the Monetary Order issued previously remain unsatisfied the landlord remains at liberty to enforce it as necessary.

I noted that the landlord had included a claim in sum of \$1,750.00 for the value of “caretaker duties” allegedly not performed by the tenants during the months of July 2013 through October 2013. It was undisputed that the parties had agreed that the tenants would perform “caretaker duties” at the rural residential property and that such duties included: fence repairs, haying fields, irrigating hay fields, pest control, and other minor repairs considered to be maintenance issues. In exchange for their caretaker duties the tenants were compensated by way of discounted rent although the tenancy agreement does not specifically identify the amount of the discount or the amount of rent payable should the tenants not perform “caretaker duties”. The parties were clearly in dispute as to whether the tenants fulfilled their “caretaker duties”. As the parties were informed during the hearing, my jurisdiction is limited to that provided to me under the *Residential Tenancy Act* (the Act) and I do not have authority to resolve labour disputes. Since the Act does not require a tenant to perform most of the “caretaker duties” described to me, I declined jurisdiction to make any finding or awards with respect to performance of “caretaker duties”.

#### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for unpaid rent, utilities and damage from the tenant?
2. Is the landlord authorized to retain the security deposit and pet damage deposit?

#### Background and Evidence

It was undisputed that the tenancy commenced June 1, 2012 and the tenants paid a security deposit of \$250.00 and a pet damage deposit of \$250.00. The tenancy agreement provides that the tenants would pay rent of \$500.00 to the landlord on the 1<sup>st</sup> day of every month. The landlord did not prepare a move-in inspection report.

The rental unit was a cabin located on a rural property which they shared with their dogs and horses. The tenants were permitted to use certain areas of the acreage for up to three horses.

Below, I have summarized the parties respective position with respect to the landlord's claims:

### **Rent**

The tenancy ended in September 2013 pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent and the landlord was provided an Order of Possession on October 1, 2013. The tenants finished removing all of their possessions from the property and returned the keys to the landlord on October 18, 2013. The landlord received \$150.00 from the tenant for use and occupancy of the property for the first half of October 2013.

The landlord is seeking loss of rent for the month of October 2013 for the remaining balance of \$350.00. The landlord acknowledged that he did not attempt to re-rent the unit, explaining that he has no intention of being a landlord again.

The tenant was agreeable to compensating the landlord for October 1 -18, 2013; hence the \$150.00 partial payment she made. However, the tenant sought to recover \$100.00 for a lawnmower battery, hotwire, and conductors purchased for the property for which the tenants did not receive reimbursement from the landlord. The tenant did not supply a copy of the receipts or evidence the landlord had given the tenants approval to purchase the materials and deduct the cost from rent.

The landlord was not agreeable to compensating the tenants for the above-described items, pointing to the addendum that requires the tenants to request materials needed for the property in writing and receive approval from the landlord. The addendum further stipulates that only with approval of the landlord may the tenants deduct the amount from rent upon delivery of a copy of the receipt.

### **Propane**

The tenancy agreement provides that utilities are not included in rent. The landlord is seeking recovery of \$86.12 for propane used by the tenants.

The tenant agreed to compensate the landlord for the amount claimed.

### **Damage to Meadow**

The landlord submitted that the tenants were restricted to three horses, as provided in the addendum, but that they had four horses on the property. The landlord claimed the meadow was over-grazed, which was prohibited in the addendum, and full of manure. As a result, the meadow will have to be cleaned and re-seeded in the spring. The landlord submitted that he would have to rent equipment, purchase seed, and spend eight hours to accomplish the above tasks at an estimated cost of \$640.00.

In support of his position that the fields were over-grazed, the landlord referred me to photographs taken of the fields. The only photographs of fields provided to me were those supplied as evidence by the tenant.

The tenant responded by stating that she had taken in a fourth horse for approximately two weeks. The tenant denied responsibility for having to re-seed the meadow pointing to the photographs as evidence the fields used by the tenants were left in a very similar condition as other fields on the property that were not used by the tenants. The tenant submitted that in the spring the fields grow in lush although some well travelled areas do require re-seeding.

### **Damage to fascia**

The landlord submitted that the tenants had a satellite receiver attached to the fascia of the rental unit. Upon its removal, three holes were left and since the fascia is aluminum the holes cannot be filled. The landlord claimed that he obtained a verbal quote from his roofer that the section of fascia could be replaced at a cost of \$175.00. The landlord acknowledged that has yet to have the fascia repair made as he is waiting for the outcome of this hearing. Should the landlord do the repair himself the landlord estimated that it would take him five hours plus the cost of the fascia.

The tenant acknowledged that there were three holes left in the fascia after her satellite provider removed the receiver; however, the tenant thought the landlord's claim was excessive. The tenant did not refute the landlord's statement that the fascia is aluminum.

### **Security deposit and pet damage deposit**

The landlord seeks to retain the deposits in partial satisfaction of the amounts claimed against the tenants.

The tenant submitted that since a move-in inspection report was not completed by the landlord the landlord has extinguished his right to claim against the deposits.

### **Analysis**

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 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.

The burden of proof is based on the balance of probabilities and in this case the landlord, as the applicant, has the burden of proof. It is important to note that 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.

Upon consideration of all of the evidence before me, I provide the following findings and reasons with respect to each of the landlord's claims over which I have jurisdiction.

### **Rent**

By way of a previous dispute resolution, it was found that the tenancy ended in September 2013. Since the tenants did not return vacant possession of the rental unit to the landlord until October 18, 2013 I find the tenants were over-holding the rental unit.

As provided under section 57 of the Act, where a tenant continues to occupy a rental unit after the tenancy has legally ended, the landlord may claim compensation for those days. Since the landlord is already in receipt of a Monetary Order for September 2013 rent, I find the landlord further entitled to compensation for the period of October 1 – 18, 2013. On a per diem basis, I calculate this to be  $\$500.00 \times 18/31 \text{ days} = \$290.32$ . Taking into account the tenants have paid \$150.00 toward use and occupancy for the month of October 2013 I find the landlord entitled to a award for the remaining balance of \$140.32 [ $\$290.32 - \$150.00$ ].

Since the landlord no longer used the rental unit as a rental unit after October 18, 2013 I find the landlord did not suffer a loss of rent after that date.

I have rejected the tenant's request to take into account \$100.00 in expenditures in determining the above award since the tenant did not produce any receipts or evidence that the landlord had approved the expenditures. Nor, were the expenditures for emergency repairs as defined under the Act.

### **Propane**

I am satisfied the tenants were responsible for paying for their own utilities, including propane. The landlord is awarded \$86.12 for propane as requested and as agreed to by the tenant.

### **Damage to Meadow**

Upon review of the photographs, I find I cannot determine that the meadow was over-grazed at the end of the tenancy, as alleged by the landlord. Nor was I presented evidence as to the condition of the meadow at the start of the tenancy. I also find the tenant effectively refuted the landlord's allegations about over-grazing of the meadow and, since the landlord has the burden of proof, I find the landlord failed to meet his burden. However, the tenant's written submissions appear to acknowledge that some seeding of well used areas (such as: outside the horse shelter, by the watering station and by the horse feeder). Therefore, I provide the landlord a nominal award of \$50.00 to re-seed these areas.

### **Damage to fascia**

Under the Act, a tenant is required to repair damage they cause, or caused by others they permit on the property. Where a tenant does not make the repair, the landlord may seek compensation from the tenant for the cost of the repair.

In this case, it is undisputed that three holes were left in the aluminum fascia on the rental unit due to installation of a satellite by a provider the tenants engaged to provide such a service. Therefore, I find the tenants responsible for the damage.

At issue is the value of the damage since the tenant submitted the claim was excessive and the landlord had not provide documentation or witness testimony to verify the amount of the claim. Since the fascia is aluminum I find it reasonable that the fascia has to be replaced as opposed to merely filing, sanding and painting. Taking all of this into account, I find the landlord's claim for \$175.00 falls within the realm of reasonable and I award that amount to the landlord.

### **Filing fee**

As the landlord's application had merit, I award the landlord recovery of the filing fee.

### **Security deposit and pet damage deposit**

Since the landlord failed to complete a move-in inspection report as required by the Act, the landlord did extinguish his right to claim against the deposits for damage to the property. The Act permits a landlord to claim against the security deposit for amounts other than for damage if there has been extinguishment. Since the landlord claimed for

rent and utilities I find the landlord had a right to make a claim against the security deposit.

The Act restricts a pet damage deposit to be used for damage caused by a pet only and the landlord lost the right to claim against the pet damage deposit for damage, as explained above. Nevertheless, section 72 of the Act provides that I, as a delegated authority of the Director, may offset amounts owed to one party against amounts owed to the other.

In light of the above, I offset the tenants' security deposit and pet damage deposit against the awards to the landlord and in doing so I authorize the landlord to retain the deposits.

Since the deposits fully offset the landlord's awards, except for a very small balance of \$1.44, I consider the landlord's awards sufficiently satisfied and I do not provide a Monetary Order with this decision. Below, I provide a summary of the awards to the landlord and offset of the deposits:

Awarded to the landlord with this decision –	
Over-holding	\$ 140.32
Propane	86.12
Re-seeding	50.00
Damage to fascia	175.00
Filing fee	<u>50.00</u>
Total	\$ 501.44
Less: security and pet damage deposits	<u>(500.00)</u>
Balance	\$ 1.44

### Conclusion

The landlord was awarded compensation in the total amount of \$501.44. The landlord has been authorized to retain the tenants' security deposit and pet damage deposit in satisfaction of the total award. Accordingly, I do not provide either party a Monetary Order with this decision.

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: February 14, 2014

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Residential Tenancy Branch



