



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND

### Introduction

On February 19, 2014 a hearing took place to hear the Landlord's Application for Dispute Resolution (the "Application") relating to a Monetary Order for unpaid rent and utilities; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to keep all or part of the pet damage or security deposit; and to recover the filing fee from the Tenant for the cost of the Application. An interim decision was issued to the parties on these issues on February 21, 2014 in which the Landlord was issued with a Monetary Order and allowed to keep the Tenant's security deposit.

The hearing was adjourned to hear the Landlord's Application for damage to the rental unit which is now addressed in this decision. As a result, this decision should be read in conjunction with my interim decision of February 21, 2014.

Both Landlords and the Tenant appeared for this reconvened hearing. The male Landlord and the Tenant both provided affirmed testimony during the hearing. The interim decision required the Landlord to serve the Tenant with printed photographs in accordance with the Rules of Procedure. However, the Landlord testified that he had sent the CD with the photos and video to the Tenant. The Tenant confirmed that she had examined the contents of the CD and although this material was not before her at the time of the hearing, she consented to the hearing continuing.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

While both parties provided a large amount of written evidence, I have only referred to the relevant facts and issues in this decision.

Issue(s) to be Decided

- Is the Landlord entitled to damages to the rental suite alleged to be caused by the Tenant?

Background and Evidence

The Landlords completed a move in condition inspection report on February 28, 2013 and a move out condition inspection report on December 23, 2013. This was provided as evidence. The Tenant confirmed that she was present for the move out inspection but refused to sign it because the inspection became heated and she could no longer be in the presence of the Landlords.

The Landlord and Tenant presented the following evidence in relation to the Landlords' claim for damages to the rental suite:

- The Landlords claim \$264.32 for two convection heaters which they allege were damaged by the Tenant during the tenancy.

The Landlord testified that on November 23, 2013 he attended the rental suite for a scheduled inspection where the Tenant was present. It was during this time that the Landlord noticed that one of the convection heaters in the living area of the rental suite was damaged. The Landlord explained that there was a big crack along the front of the heater and based on the manufacturer's instructions, such a crack in the heater rendered it unsafe. The Landlord proceeded to remove the heater as it presented a hazard. The Landlord sent the Tenant a letter on November 24, 2014 explaining that the heater had to be removed because it was damaged and that the Tenant was responsible for replacing the heater or paying the Landlord compensation; the Landlord also explained in the letter that the second heater would also be examined. The Landlord testified that the Tenant did not respond, replace the heater or pay the Landlords any money.

The Landlord testified that on November 25, 2013 during the second scheduled inspection, this time without the presence of the Tenant, the Landlord discovered that the other convection heater in the bedroom had also been damaged and as a result, the Landlord removed the heater for the same reasons as above. The Landlord again sent another letter to the Tenant on November 26, 2014 again explaining the need for the Tenant to replace the heater or pay for the cost of its replacement directly to the Landlord.

The Landlord provided a photograph of the damage to the second heater in situ, as evidence and drew my attention to the fact that the damage to the heater had been recorded on the move out inspection report and that his damage was not shown on the move in condition inspection report. The Landlord submitted that the heaters were installed, brand new the day before the Tenant moved in and provided documentation showing the current costs of the same heater in Wal-Mart in the amount of \$264.32.

The Tenant denied the convection heaters were brand new citing the fact that she had observed the same ones during her viewing a week prior to her moving in. The Tenant also denied the damage to the convection heater and submitted that the damage was caused by the Landlord. The Tenant testified that the Landlord mentioned that the heaters were installed too close to the carpets and that this posed a fire safety hazard; As a result, the Landlord removed the heaters and in the process of doing so she saw the Landlord damage the heaters in the manner he testified to and is now blaming this on the Tenant.

The Tenant testified that on the second inspection, the Tenant and a friend carefully inspected the second convection heater before the inspection was to take place, and no damage could be seen; she then learnt of the damage when she arrived back home after the second inspection where she saw a picture of the damage sent to her by the Landlords which she now claims was done by the Landlord.

When the Tenant was asked as to why she did not respond to the written letters provided to her by the Landlords with regards to the damage to the heaters, the Tenant stated that she was being bombarded with letters and harassment from the Landlords. The Landlord submitted that the move in condition inspection report shows that the heaters were new which the Tenant had signed.

- \$210.00 for cleaning costs of the rental suite.

The Landlord testified that the Tenant had left the rental suite dirty and unclean. The walls, baseboards, floors, bathrooms, windows, kitchen cabinets, window sills and ceilings were not cleaned. The Landlord provided a number of photographs which indicate that the areas testified to by the Landlord had not been cleaned. The Landlords claimed that he had provided two quotes for cleaning the rental suite as evidence for these costs and took the midpoint of the quotes to determine the claim amount.

The Tenant denied leaving the suite unclean at the end of the tenancy and provided photographic evidence showing areas of the rental suite which appear to be clean. The Tenant submits that the Landlord went around the suite taking close up photographs of

damage which she attributed to normal wear and tear which was made to look like heavy damage.

The Landlord again pointed to the condition inspection report which shows the condition of the rental suite at the start of the tenancy was “Good” and at the end of the tenancy the areas testified to by the Landlord were shown as “dirty” and “unwashed”.

The Tenant submitted that the photographs supplied by the Landlord were taken after the tenancy had ended and did not reflect the state of the rental suite when she vacated it. The Landlord claimed that the Tenant’s photographs were not close ups and were not an accurate reflection of all the damage to the rental suite.

- \$561.12 for damage to the baseboards, floors and front door.

The Landlord testified that the Tenant had caused damage to the wood floors, the baseboards, the walls of the rental suite, the tiles in the bathroom and the broken glass in the front door. The Landlord provided photographic evidence in relation to these damages claimed. The Landlord testified that the floor had lifted in several parts and was burnt and that he had received a quote which included the repair and replacement of the damaged areas of the laminate flooring which was provided as evidence for the hearing.

The Tenant denied any damage to the baseboards citing the fact that the damage had been caused as a result of condensation from faulty heaters which the Landlord removed. The Tenant submits that there were many marks and damage to the wooden floors at the start of the tenancy which is the reason why she insisted the Landlord note the major ones on the condition inspection report. However, the Tenant testified that she lived with these scuffs during the tenancy as she covered them with rugs and her furniture and then when she removed these items the Landlords proceeded to document the same damages at the start of the tenancy in a manner that suggested that she had caused them. The Tenant submits that the damages claimed by the Landlord in this portion of the Application are the result of reasonable wear and tear.

The Tenant submitted that she caused no damage to the bathroom floors through any flooding damage claimed by the Landlord in his written submissions as she had spoken to the Inspector, the contact details of whom she provided, who informed her that there was no permanent damage to the floors.

- \$50.00 for the cost of replacing door locks to the rental suite.

The Landlord testified that the Tenant had failed to return him the keys on the day of the move out condition inspection because the Tenant wanted her post dated cheques back. The Landlord testified that he did not have her cheques with her and informed her that he would return them as soon as possible. As a result, the Tenant refused to hand the Landlords the keys after the move out condition inspection. The Landlord claimed that as a result, he replaced the door locks and now claims \$50.00 in compensation.

The Tenant confirmed that she had not given the Landlord the keys to the rental suite because he did not give her the cheques as she had previously requested. However, the Tenant confirmed that these were returned to the Landlord the next day after the Landlord provided her with the remainder of the post date cheques. The Tenant submitted that the Landlord had not changed the locks as testified by the Landlord which is the reason why the Landlords were unable to submit a receipt for these costs.

### Analysis

In my analysis of the evidence presented by the parties during this hearing, I have considered the following provisions and I have based my findings on the evidence as a whole on the balance of probabilities, rather than focusing on one particular aspect of the evidence.

- 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 Landlord. 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.

- 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 a result, I have not considered the witness statements provided for this hearing as each witness statement contradicts the witness statement provided by the other.
- Section 37(2) of the Act requires a Tenant to leave a rental suite at the end of the tenancy reasonably clean and undamaged except for reasonable wear and tear.
- Policy Guideline 1 to the Act details the responsibility of both the Landlords and Tenants for residential premises.
- In dispute resolution proceedings, Section 21 of The Residential Tenancy Regulation states that a condition inspection report is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary.

By using the above provisions I have made the following determination of the Landlord's monetary claim for damages as follows:

In relation to the Landlord's claim for \$50.00 for the changing of the locks, while I accept that the Tenant had no right to hold the keys to the rental suite pending the return of her post dated cheques, I find that the Landlords failed to establish that the locks had actually been changed. The Landlords failed to provide a receipt to verify this loss and the Tenant did return the key, albeit that it was the day after the move out inspection. Therefore, I dismiss this portion of the Landlords' monetary claim.

In relation to the cleaning costs claimed by the Landlords, I have considered the photographic evidence provided by the Landlords and the move out condition inspection report which details the suite was not left clean at the end of the tenancy. I have also considered the Tenant's photographic evidence and while I accept that the photographs indicate the suite was left clean, the Tenant has not provided sufficient photographic evidence which is able to contradict the photographic evidence of the Landlord. I also accept the Tenant's submission that some of the photographs were taken close up and may give the illusion that there was more damage than what was being represented by the Landlord.

However, I find that the Landlord has presented sufficient evidence in the photographs submitted which clearly show that the Tenant had not reasonably left the suite clean as required by the Act, such as the cleanliness of the kitchen cupboards, the bathroom, the windows and walls as well as missing light bulbs which the Tenant is responsible for replacing at the end of the tenancy. These items are supported by the comments made on the move out condition inspection report.

In assessing the amount to be awarded to the Landlord for the failure of the Tenant to leave the rental suite reasonably clean at the end of the tenancy, I find that the Landlord failed to submit two actual cleaning quotes or invoices in the 56 pages of evidence submission for the first hearing and in the 28 pages (re-organized from the first submission) even though this is listed in the contents page. However, I find that based on the foregoing, I award the Landlord an appropriate amount of **\$100.00** for the cleaning costs based on the sufficient evidence provided to support this portion of the monetary claim.

In relation to the Landlords' claim for damages to the floor and the baseboards, I find that some damage had been recorded to the flooring at the start of the tenancy which the Tenant had insisted on documenting on the move in inspection. The Landlord recorded on the move out inspection report that there was minor damage to the vinyl flooring in the living room and there was damage to the baseboards. However, I find that while the photographs submitted by the Landlord do show damage that the Tenant would be responsible for, I find that this damage is minor and not 'heavily damaged' as testified to by the Landlord.

I accept the evidence of the Landlord that there was a crack to the door window as evidenced on the move out condition inspection report and I find that the Tenant's suggestion that this was present at the start of the tenancy is unsubstantiated.

In determining the amount to be awarded to the Landlords for this cost, I find that the quote provided for this claim is excessive and as a result, I award the Landlords an appropriate amount of **\$250.00** for this portion of the claim.

In relation to the Landlords' claim for the damaged heaters, having carefully considered the balance of probability of each party's evidence, I find that the Landlords are entitled to this cost. The Landlords documented on the move in condition inspection report that the convection heaters were new. However, the Tenant now disputes that they were new which is contrary to her signature on the move in condition inspection report which clearly indicates they were new.

The Landlord sent the Tenant a letter indicating that one of the convection heaters was broken and asked the Tenant to replace the heater or pay them money for it. In this letter the damage was extensively detailed and the Tenant was put on notice that the other heater installed would be examined on the next inspection.

In this case, I find that if the Landlord had caused the damage as testified to by the Tenant then it would have been prudent for the Tenant to dispute this at this time and ensure she was present for the next inspection which is the time when the Landlord discovered the damage to the second unit. In this case, I find that the Landlords' evidence, considered together, is more compelling than the Tenant's evidence and I find that on the balance of probabilities, the Tenant is responsible for these costs in the amount of **\$264.32**, as evidenced by the receipt provided for a like replacement.

As a result, the Landlords are awarded a total amount of \$614.32

### Conclusion

For the reasons set out above, I grant the Landlords a Monetary Order pursuant to Section 67 of the Act in the amount of **\$614.32**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) 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: April 24, 2014

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Residential Tenancy Branch



