



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNR, MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for compensation under the Act and the tenancy agreement, for cleaning of the rental unit, and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified he served the Tenant with the Notice of Hearing, his Application and the evidence by registered mail, sent on January 20, 2014. Under the Act, the Tenant was deemed served by registered mail five days later. Nevertheless, the mail was returned to the Landlord as the Tenant refused it or neglected to accept it. I note that refusal or neglect to accept registered mail is not a ground for Review under the Act. The Landlord further testified that he personally served the Tenant by hand with the documents on February 28, 2014. Despite this the Tenant did not appear for the hearing. Based on the above, I am satisfied the Tenant was duly served under the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

This tenancy began on February 1, 2013, with the Tenant and two other renters entering into a written, fixed term tenancy, to run until March 31, 2015. The Tenant and the two other renters were co-tenants. The monthly rent was \$1,500.00 and they paid a security deposit of \$750.00, on or about January 16, 2013. There was a written addendum to the tenancy agreement which, among several other terms, required a \$125.00 administration fee if the Tenant broke the lease before it ended, and set out that firewood that was stored onsite for the Landlord was not included with the rent and must be purchased for using.

In September of 2013, only \$750.00 was paid of the \$1,500.00 due for rent.

One of the co-tenants provided the Landlord with a letter, which was entered into evidence. The co-tenant explains in the letter that the other co-tenant, her mother, had gone into a care home in or about July of 2013, as she was ill. The co-tenant writes that she and the Tenant agreed they would continue the tenancy following the departure of the other co-tenant.

The co-tenant also writes that sometime in July of 2013 the Tenant abandoned the rental unit without explanation. The co-tenant also writes that the Tenant left behind an old motorhome, and a great deal of, "... junk and garbage", and refused to respond to messages regarding its removal. The co-tenant explains that she paid half of the September rent.

In September of 2013, the Landlord issued all the co-tenants with a Notice to End Tenancy for unpaid rent. Although the Landlord used an older form, none of the co-tenants disputed the Notice as the rent had not been paid in full.

In October of 2013, the Landlord entered into a new tenancy agreement for the rental unit with the co-tenant, and at a lesser amount of rent than was in the subject tenancy agreement.

The Landlord now claims against the Tenant for one half of a month of rent, in the amount of **\$750.00**. The Landlord claims for **\$125.00** as the administration fee for breaking the lease before the end of its term.

The Landlord claims **\$240.00**, for four hours of work at \$60.00 per hour cleaning up after the Tenant. The Tenant had left a workshop full of debris and garbage, and the Landlord testified that he had to use his vehicle and it took time to make trips to the

dump. He testified he had a coupon from the local landfill which allowed him to use the landfill without paying the usual fee.

The Landlord also claims for one hour of dealing with the removal of the motorhome from the rental unit property, in the amount of **\$60.00**. The Landlord testified and provided photographic evidence that the motorhome was full of debris and garbage. The Landlord testified it was also infested by rats.

The Landlord testified that when he spoke with the Tenant he had promised to remove a boat and the motorhome from the property. The Tenant did remove the boat, but left the motorhome on the property. The Landlord claims **\$200.00** for four months of storage of the motorhome, at \$50.00 per month.

The Landlord had one person come to look at the abandoned motorhome to evaluate it for restoration. This person looked at the motorhome, but did not take it and then would not return phone calls from the Landlord. The Landlord testified that he had a recycling company look at the motorhome and they refused to take it, unless the Landlord removed all the garbage, then the interior cupboards, panelling and insulation, and then it could be recycled for the frame only.

The Landlord had a towing company take the motorhome to a disposal company. The disposal company charged the Landlord by the metric ton to dispose of the motorhome. The Landlord claims **\$210.00** for towing and **\$604.80** for the disposal. In support of this, the Landlord has provided receipts from these two companies.

The Landlord testified that the Tenant had a job at a local lumber mill, and had rights to sell some of the waste wood for firewood. At the outset of the tenancy the parties agreed that the Tenants could use the Landlord's dried firewood as long as they replaced it. The Tenant had agreed with the Landlord to replace the Landlord's firewood with his own firewood. According to the Landlord, the Tenant then informed the Landlord he would only replace the firewood he had used at the rental unit up until July of 2013, when he left the rental unit.

The Landlord has measured the firewood used during the tenancy and claims **\$550.00** for the firewood, based on the loss of 2.75 cords of wood. In evidence the Landlord has supplied photographs of the firewood storage, calculations of the amount of loss, and an advertisement indicating firewood for sale at \$200.00 a cord in the vicinity of the rental unit.

In summary, the Landlord claims as follows:

a.	½ month rent for September 2013	750.00
b.	Lease administration fee	125.00
c.	Cleaning up and taking items to the dump	240.00
d.	Dealing with the removal of the motorhome	60.00
e.	Towing and disposal of motorhome	814.80
f.	Firewood used in the rental unit	550.00
g.	Storage of motorhome 4 months @ \$50.00 per	200.00
h.	Filing fee	50.00
	<b>Total claimed</b>	<b>\$2,789.80</b>

### Analysis

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 Tenant. 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.

Based on all of the above, the undisputed evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenant failed to pay rent in the amount of **\$750.00** for September of 2013. In the circumstances of this tenancy the co-tenants were jointly and severally liable under the tenancy agreement. As testified to by the Landlord, one of the co-tenants had paid half of the rent for September. In making the Application the Landlord determined they would only proceed with a claim against the Tenant, as was the right of the Landlord to name the party they wanted to proceed against.

I find the Tenant had not ended the tenancy agreement with the Landlord and was still liable and had obligations under the tenancy agreement until it ended. Rent must be paid when due, under section 26 of the Act, unless the Tenant has some authority under the Act to not pay rent. I find no evidence that such authority existed here.

In this situation, I find the tenancy ended on September 30, 2013, pursuant to section 46 of the Act, as the rent was not paid in full in breach of the tenancy agreement and the Act, and the notice for unpaid rent was not disputed. I also find that the Tenant is liable for the lease breaking administration fee of **\$125.00**, as it is in the nature of liquidated damages, and was included in the tenancy agreement.

I further find that the Tenant left the rental unit and abandoned items there, which the Landlord had to deal with. The Landlord also had to find a solution to removal of the motorhome, as the Tenant failed to remove this, despite repeated requests from the Landlord. I find having to take these steps due to the Tenant's breaches caused the Landlord to suffer financial losses.

However, I do not allow the Landlord the sum of \$60.00 per hour for his work, as that appears to be a high amount for this type of labour, and the Landlord might have mitigated his losses by using a less expensive method. Section 7 of the Act, set out below, requires mitigation. Nevertheless, I allow the Landlord \$20.00 an hour, and award 4 hours for removal of debris and garbage and 1 hour for the administration of removal of the motorhome, for an award of **\$100.00**

Section 7 of the Act states:

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Reproduced as written.]

I also find the Tenant knew or ought to have known the Landlord would incur costs associated with disposing of the motorhome, as it did not appear to have been of much value, if any, according to the evidence before me. Therefore, I allow the Landlord **\$814.80**, for towing and disposal of the motorhome.

I do not allow the Landlord the claims of \$200.00 for storing the motorhome, as the Landlord failed to prove he suffered any loss due to the motorhome being stored at the property; although I find he has established a loss for its removal.

I find the Tenant is liable for the cost of the firewood used in the rental unit. The Landlord and the Tenant had an agreement he would replace the firewood used in the rental unit with the firewood the Tenant received from work. According to the Landlord the Tenant refused to replace the wood used after he left in July. I do not find that this mitigates the Tenant's loss, as it is unlikely much firewood was used by the remaining co-tenant in July, August or September, these being warmer summer months. Therefore, I accept the evidence of the Landlord of the loss and allow **\$550.00** for firewood that the Tenant did not replace.

Therefore, I allow the Landlord's claims as follows:

a.	½ month rent for September 2013	750.00
b.	Lease administration fee	125.00
c.	Cleaning up/dumping/motorhome removal	100.00
d.	Towing and disposal of motorhome	814.80
e.	Firewood used in the rental unit	550.00
f.	Filing fee	50.00
	<b>Total awarded to Landlord</b>	<b>\$2,389.80</b>

Lastly, I find that the Landlord is still holding the security deposit of \$750.00, and has suffered a loss of rent due to the breach of the Tenant. There is no evidence the Tenant supplied his forwarding address in writing to return the deposit to, as required by the Act. Therefore, under section 64 of the Act, I allow the Landlord to amend their claim to include a request to retain the security deposit against rent due. Furthermore,

pursuant to section 72 of the Act, I allow the Landlord to retain the security deposit in partial satisfaction of the claim.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

I find that the Landlord have established a total monetary claim of **\$2,389.80** comprised of the above described amounts and the \$50.00 fee paid for this application. I order that the Landlord retain the deposit of **\$750.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,639.80**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Tenant breached the tenancy agreement and the Act, by failing to pay rent when due, by failing to remove personal property, by failing to clean the rental unit property, and by failing to replace firewood used, as per the tenancy agreement.

The Landlord has established a right to keep the security deposit in partial satisfaction of the claims and is granted a monetary order for the balance due of **\$1,639.80**

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: May 05, 2014

---

Residential Tenancy Branch

