



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNDC FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The landlord applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the tenant's security deposit, and to recover the filing fee.

The tenant and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that was presented during the hearing and 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.

The parties agreed that they received the documentary evidence package from the other party and that they had the opportunity to review the documentary evidence prior to the hearing, with the exception of digital CD evidence submitted by the landlord. As the tenant testified that he could not open the digital CD evidence submitted by the landlord, that evidence was not submitted in accordance with the Rules of Procedure, and was excluded in full. With the exception of the digital CD evidence from the landlord which was excluded from the hearing as the tenant could not open that evidence, I find the parties were served in accordance with the *Act*.

### Preliminary and Procedural Matter

At the outset of the hearing, the landlord withdrew his application to keep the tenant's security deposit as the parties confirmed that the landlord had already returned the tenant's security deposit. As a result of the above, I will not consider that portion of the landlord's application as the landlord withdrew that portion of his application.

Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the written tenancy agreement was submitted in evidence. A fixed term tenancy agreement began on May 1, 2011 and reverted to a month to month tenancy after May 1, 2012. Monthly rent in the amount of \$1,300.00 was due on the first day of each month. The parties agreed that the tenant vacated the rental unit on November 15, 2013. The parties agreed the tenant's security deposit of \$650.00 had already been returned by the landlord.

The landlord has claimed \$1,660.01 comprised of the following:

Item 1. Unpaid rent for November 15 – 30, 2013	\$650.00
Item 2. Carpet replacement due to damage	\$600.00
Item 3. Rubbish removal	\$180.00
Item 4. Cleaning costs	\$115.00
Item 5. Two lock replacements	\$31.32
Item 6. Water bill	\$33.69
Item 7. Filing fee	\$50.00
<b>TOTAL</b>	<b>\$1,660.01</b>

Regarding item #1, a copy of a mutually settled agreement between the parties was submitted in evidence. The file number of that previous Decision dated October 2, 2013, has been included on the cover page of this decision for ease of reference. In the October 2, 2013, the parties mutually agreed that the tenancy will end on November 30, 2013. The October 2, 2013 mutual agreement between the parties was not changed by way of a review, clarification or correction and remains in full force and effect. In that Decision it also reads, "...The tenant will pay November's rent to the landlord on November 1...".

The parties confirmed that the tenant only paid \$650.00 of November 2013 rent, which was \$1,300.00. The tenant vacated the rental unit early on November 15, 2013. Although the tenant alleged that the landlord verbally agreed to the tenant only paying half of November 2013 rent, the landlord denied making such an agreement, as they

had agreed on October 2, 2013, that the tenancy would end on November 30, 2013, which is reflected in their mutually settled agreement submitted in evidence. The landlord is seeking the remaining \$650.00 of unpaid November 2013 rent as a result, which is comprised of half of the total amount of rent, \$1,300.00.

Regarding item #2, the landlord has claimed \$600.00 for carpet replacement due to damage by the tenant. The parties agreed that an incoming and outgoing condition inspection report were not completed by the landlord during the tenancy. The landlord confirmed that photo evidence was not submitted to support the condition of the carpet at the start of the tenancy. The tenant stated that the carpets were not in good shape at the start of the tenancy.

Regarding item #3, the landlord has claimed \$180.00 for rubbish removal. The landlord submitted a receipt in the amount of \$180.00 to remove the tenant's rubbish left behind in the rental unit that the landlord alleged the tenant said he was not picking up after vacating the rental unit. The landlord testified that he valued the items left behind by the tenant as \$0.00 and provided a list in evidence. The tenant did not dispute that he left items behind in the rental unit after vacating but did not agree with the landlord that he said he would not be returning to pick up the items.

Regarding item #4, the landlord has claimed \$115.00 for cleaning costs to clean the rental unit after the tenant vacated. The tenant testified that he cleaned the rental unit. The landlord did not submit any photos in evidence in accordance with the Rules of Procedure of the condition of the rental unit at the end of the tenancy.

Regarding item #5, the landlord has claimed \$31.32 for two lock replacements. The tenant agreed that he changed two locks in the rental unit, however, the parties disputed that the keys were returned to the landlord. The tenant alleges that he returned the keys to the new locks to the landlord, and the landlord denies that the keys were returned by the tenant. The landlord submitted a receipt in the amount of \$31.32 for two lock replacements.

Regarding item #6, the landlord has claimed \$33.69 for the tenant's portion of the unpaid water bill. The landlord submitted a water bill in evidence in the total amount of \$39.42 for the service period of October 9, 2013 to December 9, 2013, which is 62 days. The landlord testified that he calculated the daily water amount to .6358 cents per day and multiplied that amount by 53 days, as the tenancy ended on November 30, 2013, for a total owed by the tenant of \$33.69. The tenancy agreement submitted in evidence reads in part that the tenant will pay "...service rates for hydro, water, heating fuel, telephone and cablevision."

Regarding item #7, the \$50.00 filing fee, the filing fee will be determined later in this Decision, pursuant to section 72 of the *Act*.

### Analysis

Based on the documentary evidence, the testimony of both parties, and on the balance of probabilities, I find the following.

#### Test for damages or loss

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 what was reasonable to minimize the damage or loss.

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.

**Item #1** – Regarding item #1, the landlord has claimed for the \$650.00 of unpaid November 2013 rent. The tenant vacated on November 15, 2013, after having agreed that the tenancy would end on November 30, 2013 by way of a mutually settled agreement between the parties dated October 2, 2013, submitted in evidence. In that Decision it also reads, “...The tenant will pay November’s rent to the landlord on November 1...”. A mutually settled agreement is final and binding between the parties under the *Act* and as a result, **I find** that the landlord has met the burden of proof as the tenancy ended on November 30, 2013. As a result, **I grant** the landlord **\$650.00** for the unpaid portion of November 15-30, 2013 rent that the tenant failed to pay to the landlord.

**Item #2** – The landlord has claimed \$600.00 for carpet replacement due to damage alleged by the landlord. The tenant stated that the carpets were not in good shape at the start of the tenancy. Due to an incoming and outgoing condition inspection report

not being completed by the landlord during the tenancy, **I find** the landlord breached sections 23 and 35 respectively, by failing to complete the incoming and outgoing condition inspection reports. Furthermore, the landlord did not provide photo evidence to support the condition of the rental unit at the start of the tenancy. Therefore, **I dismiss** this portion of the landlord's claim, due to insufficient evidence, **without leave to reapply**.

**Item #3** - The landlord has claimed \$180.00 for rubbish removal. The landlord submitted a receipt in the amount of \$180.00 to remove the tenant's rubbish left behind in the rental unit that the landlord alleged the tenant said he was not picking up after vacating the rental unit. The landlord testified that he valued the items left behind by the tenant as \$0.00 and provided a list in evidence. The tenant did not dispute that he left items behind in the rental unit after vacating but did not agree with the landlord that he said he would not be returning to pick up the items. Section 37 of the *Act* applies and states:

**Leaving the rental unit at the end of a tenancy**

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) **When a tenant vacates a rental unit, the tenant must**

(a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**

(b) 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.

**[my emphasis added]**

Based on the above, and taking into account the landlord's receipt for rubbish removal in the amount of \$180.00, **I find** the tenant breached section 37 of the *Act* by failing to remove his personal belongings and I accept that the remaining items were considered garbage. Therefore, **I find** the landlord has met the burden of proof and **I grant** the landlord **\$180.00** for rubbish removal.

**Item #4** – Regarding item #4, the landlord has claimed \$115.00 for cleaning costs to clean the rental unit after the tenant vacated. The tenant testified that he cleaned the rental unit. The landlord did not submit any photos in evidence in accordance with the Rules of Procedure of the condition of the rental unit at the end of the tenancy.

Therefore, **I dismiss** this portion of the landlord's claim, due to insufficient evidence, **without leave to reapply**.

**Item #5** – Regarding item #5, the landlord has claimed \$31.32 for two lock replacements. The tenant agreed that he changed two locks in the rental unit, however, the parties disputed that the keys were returned to the landlord. The tenant alleges that he returned the keys to the new locks to the landlord, and the landlord denies that the keys were returned by the tenant. Section 37 of the *Act* once again applies and states:

**Leaving the rental unit at the end of a tenancy**

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) **When a tenant vacates a rental unit, the tenant must**

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) **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.**

**[my emphasis added]**

Based on the above, and taking into account the landlord's receipt for two lock replacements of \$31.32, **I find** the tenant breached section 37 of the *Act* by failing to return the keys to the rental unit locks to the landlord. Therefore, **I find** the landlord has met the burden of proof and **I grant** the landlord **\$31.32** for two lock replacements.

**Item #6** – Regarding item #6, the landlord has claimed \$33.69 for the tenant's portion of the unpaid water bill. The landlord submitted a water bill in evidence in the amount of \$39.42 for the service period of October 9, 2013 to December 9, 2013, which is 62 days. The landlord testified that he worked out the daily water amount to .6358 cents per day and multiplied that amount by 53 days, as the tenancy ended on November 30, 2013, for a total owed by the tenant of \$33.69. The tenancy agreement submitted in evidence reads in part that the tenant will pay "...service rates for hydro, water, heating fuel, telephone and cablevision. Based on the above, and taking into account the wording of the tenancy agreement and the water bill submitted in evidence, **I find** the landlord has met the burden of proof and **I grant** the landlord **\$33.69** for compensation of that amount of the unpaid water bill.

**Item #7** - As the landlord's application had merit, **I grant** the landlord the recovery of his filing fee, in the amount of **\$50.00**.

**I caution** the landlord to comply with sections 23 and 35 of the *Act* in the future.

**I find** that the landlord has established a total monetary claim of **\$945.01** comprised of \$650.00 in unpaid rent for November 15-30, 2013, \$180.00 for rubbish removal, \$31.32 for two lock replacements, \$33.69 in unpaid water, plus the \$50.00 filing fee. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the total owing by the tenant to the landlord in the amount of **\$945.01**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The landlord's application had merit. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the total owing by the tenant to the landlord in the amount of \$945.01. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: July 21, 2014

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Residential Tenancy Branch

