



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNR, MND, MNDC, 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 damage and cleaning of the rental unit, and to recover the filing fee for the Application.

Only the Agent for 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 Agent testified that they served the Tenants with the Notice of Hearing and their Application documents by registered mail, sent on February 14, 2014. The Agent testified that he checked the tracking information for the mail and it indicated the Tenants accepted the mail on February 17, 2014. I find the Tenants have been duly served in accordance with 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 Tenants?

### Background and Evidence

This tenancy began on or about October 1, 2009, with the parties entering into a written tenancy agreement. No security deposit was paid. The tenancy agreement required the Tenants to pay rent in accordance with their income. At the end of the tenancy, in

September of 2012, the monthly rent was \$830.00 per month, payable on the first day of each month. At the beginning and end of the tenancy, written condition inspection reports were performed.

The Agent for the Landlord testified that the Tenants were given a 10 day Notice to End Tenancy for unpaid rent and were moving out on September 28, 2012. The Agent testified that a balance of rent of \$165.00 was owed from August of 2012, and the Tenants paid no rent for September 2012, and therefore the Landlord claims \$995.00 in unpaid rent. In support of this the Landlord has supplied a copy of a ledger and invoice in evidence.

The Landlord claims the Tenants owed \$56.00 for the removal of a couch during the tenancy and \$477.14 to remove garbage and debris from the rental unit at the end of the tenancy, for a sub total of \$533.14. In support of this, the Landlord has supplied a copy of an invoice and photographs into evidence. The photographs depict a broad range of debris left behind in the rental unit, including but not limited to, mattresses, dilapidated particle board furniture, clothes, kitchen sundries and garbage.

The Landlord claims the Tenants damaged the walls and they required re-painting. The Agent for the Landlord testified that the unit had been freshly painted in September prior to the Tenants taking possession of the rental unit. The Landlord claims the Tenants had damaged walls by placing stickers on them. The Landlord has provided an invoice in the amount of \$1,844.70 preparing and painting two coats throughout the three bedroom townhome. The Landlord only claims a portion of this, in the amount of \$432.35, against the Tenants for the damaged areas of the rental unit and which includes a depreciation reduction as well. In support of this, the Landlord provided photographs and an invoice in evidence.

The Landlord claims the Tenants failed to clean up the rental unit to a reasonable standard before they moved out. The Landlord claims \$210.00 for cleaning the rental unit. In evidence the Landlord has supplied a copy of the invoice for cleaning. The worker notes on the invoice that the Tenants, "... made no attempt to clean..." the rental unit and just left it as is, after removing what they wanted.

The Landlord claims the Tenants removed a garage door opener and did not return this to the Landlord when they vacated. The Landlord claims \$40.00 to replace this and included an invoice indicating this amount was due.

The Agent for the Landlord testified that the Tenants had damaged and removed some of the flooring in the rental unit; however, the Landlord was abandoning this claim as the flooring was past its useful life expectancy in any event.

Therefore, the Landlord claims as follows:

a.	Rent for August and September 2012	995.00
b.	Couch, garbage and debris removal	533.14
c.	Portion of painting	435.35
d.	Cleaning	210.00
e.	Garage door opener	40.00
f.	Filing fee	50.00
	<b>Total claimed</b>	<b>\$2,263.49</b>

Despite being served with the Notice of Hearing and Application documents from the Landlord, the Tenants did not appear, nor did they enter any evidence.

### 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 Tenants. 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 Tenants have failed to pay rent when due to the Landlord. Under section 26 of the Act, the Tenants must pay rent when it is due unless they have some authority under the Act to withhold rent. There is no evidence before me they had authority to not pay rent.

I find the Tenants breached section 37 of the Act, as I find they did not clean the unit to a reasonable standard, or make necessary repairs to the portions they damaged, and this has caused losses to the Landlord.

I further find the Landlord mitigated its losses and only charged the Tenants for a depreciated or reduced portion of the total amounts it cost to remediate the rental unit to the standard it was at prior to them taking possession.

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 has established a total monetary claim of **\$2,263.49** comprised of the above described amounts and the \$50.00 fee paid for this application. I grant and issue an order for the Tenants to pay this amount to the Landlord. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Tenants breached the Act by failing to pay rent and by failing to clean and remove debris and garbage from the rental unit. The Tenants also damaged portions of the rental unit and made no repairs prior to moving out.

The undisputed evidence of the Landlord was accepted and I find the Landlord made reasonable claims, with appropriate depreciations, and these were supported by their evidence.

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: June 16, 2014

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Residential Tenancy Branch

