



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding W. WONG ENTERPRISES (1996) LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and utilities, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord's agent ("landlord") and the two tenants, MAC and WS ("tenants"), attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The tenant WAC did not attend the hearing. The tenant, MAC, confirmed that she had authority to represent the two tenants, WS and WAC, at this hearing, as WS did not speak English. The tenant MAC confirmed that she wished to proceed with the hearing, as she did not require an interpreter and she did not wish to adjourn the hearing to seek an interpreter. The landlord confirmed that he is the owner and manager of the landlord company named in this application.

The landlord confirmed that his agent, "TS," personally served the tenants MAC and WAC with the landlord's application for dispute resolution hearing notice and first written evidence package on December 10, 2014. The landlord witnessed this service and provided signed proof of service forms with his application. The tenant MAC confirmed receipt of the landlord's hearing notice and first written evidence package, on behalf of all three tenants. The landlord confirmed that he left a copy of his second written evidence package in the tenants' mailbox on December 15, 2014. The tenant MAC

confirmed receipt of the landlord's second written evidence package, on behalf of all three tenants. In accordance with sections 88, 89 and 90 of the Act, I find that all three tenants were duly served with the landlord's hearing notice and two written evidence packages, as declared by the parties.

### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and utilities?

Is the landlord entitled to a monetary award for damage to the rental unit, arising out of this tenancy?

Is the landlord entitled to a monetary award for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

The landlord testified that this tenancy began on June 1, 2014 for a fixed term to end on May 30, 2015. Monthly rent in the amount of \$1,050.00 was payable on the first day of each month. A security deposit of \$525.00 was paid by the tenants on June 1, 2014, and the landlord continues to retain this deposit. A copy of the written tenancy agreement was provided with the landlord's application. Both parties agreed that the tenants were responsible to pay 30% of the total monthly hydro and gas utility costs in addition to the monthly rental amount, as indicated on the tenancy agreement. All three tenants occupied the same rental unit.

The landlord stated that the tenants vacated the rental unit on October 20, 2014, when the keys were handed over to TS. The tenants stated that they vacated the rental unit on October 13, 2014, and that they moved the remaining furniture from their rental unit on October 16, 2014. The tenant MAC stated that she was already living at her parent's house by October 13, 2014, and that the other two tenants, WS and WAC were only sleeping in the rental unit.

The landlord provided a number of emails in his written evidence package. On October 8, 2014, the landlord inquired as to whether the tenants were still planning to vacate the

rental unit on October 10, 2014 and for them to leave the keys in one of the kitchen drawers and the landlord would return later to retrieve them. The tenant responded on October 8, 2014, indicating that she will provide the keys to the landlord on "Sunday," (which would be October 12, 2014). On October 16, 2014, the tenants emailed to advise the landlord that they had moved most of their belongings but had a few items to retrieve on that day or the next day, during which the keys would be returned, the landlord could do an inspection and the tenants could retrieve their security deposit. On October 19, 2014, the landlord responded by advising the tenants that he would be out of town and to call TS to return the keys, that TS would do the final inspection and handle the security deposit. The landlord testified that he was actually in town on October 19, 2014 when he sent the email, but he did not know when the tenants would be leaving and he had already authorized TS to do the move-out inspection and report.

The tenants testified that they attempted to reach the landlord in order to give him the keys and complete the inspection to get their security deposit back, but the landlord was avoiding them and did not respond to their calls or respond by email in a timely fashion. When questioned as to the delay in responding to the tenant's email of October 16, 2014, the landlord initially indicated that he was out of the country on October 19, 2014 and it was difficult to get email access. The landlord later revised his testimony and stated that he was, in fact, in town on October 19, 2014.

Both parties agreed that a move-in inspection and report were completed on May 22, 2014. Both parties agree that a move-out inspection was completed on October 20, 2014, when the keys to the rental unit were provided by the tenant WAC to TS. The landlord testified that TS performed the move-out inspection and report, although he did not sign the report because it was an "oversight." The tenant MAC was unsure as to whether the tenant WAC signed the move-out inspection report, as she did not discuss it with him. The landlord said that the tenant WAC signed the move-out inspection report, even though his name appears to be printed on the report.

The landlord initially testified that he could not perform the move-out inspection on October 20, 2014, because he was out of town, so TS was assigned to do so. The landlord then testified that he returned in town on October 18 and left again on October 31, 2014, but did not perform the inspection because he had already assigned TS to the task.

The landlord provided a number of photographs with his application, stating that they were taken on October 19, 2014, the day before the move-out inspection on October 20, 2014. However, the only photographs labelled as taken on October 19, 2014, are photographs of the carpets, cabinets and kitchen. The other photographs of the walls,

holes, garbage debris, and wall markers are labelled by the landlord as taken on November 23, 2014. The landlord confirmed that other tenants moved in on November 1, 2014. The landlord claimed that TS took the photographs, as he was checking the rental unit often to see when it would become vacant. TS did not testify at the hearing to verify the authenticity of the photographs, when or where they were taken. The landlord testified that he did not see the rental unit until one month after the tenants had left, after it had been cleaned. The tenant MAC stated that her mother cleaned the rental unit after the tenants vacated.

The landlord stated that he verbally received the tenant's notice of forwarding address on November 24, 2014, but that he did not receive a written notice until December 2, 2014. The tenants maintain that they provided their forwarding address to the landlord on November 24, 2014.

The landlord was initially seeking a monetary order of \$1,501.45 but modified it to \$1,522.70 total, during the hearing. He stated that \$194.25 was for carpet cleaning, \$700.00 was for rent, \$132.20 was for hydro and gas utilities, and \$50.00 was for the filing fee. The landlord also stated that \$446.25 (rather than \$425.00) was for painting, garbage removal and to replace a doorknob. This additional \$21.25 was added to cover the GST taxes paid to the contracting company for the \$446.25 invoice, which was originally \$425.00 before taxes. During the hearing, the landlord modified his rent claim from \$700.00 to \$677.41 from October 1 to 20, 2014. He later claimed that he was only seeking rent from October 1 to 16, 2014.

The tenants agreed that they did not pay rent for October 2014 because they did not have the money, as they were looking for a new place and had to save their funds for that purpose. They also stated that the landlord did not give them enough notice to move out, as they had received a 1 Month Notice to vacate by October 31, 2014, and the tenant MAC was giving birth to her second child at the time. The tenants admitted that they did not dispute this 1 Month Notice. The tenants dispute the landlord's entitlement to rent for October 2014. Both parties agreed that the tenants decided to leave the rental unit early, initially advising the landlord that they would move out on October 10, 2014.

The landlord provided a revised invoice estimate of \$446.25 in his second written evidence package, for painting, garbage removal and to replace a doorknob. The original invoice for \$425.00 included painting, replacing a doorknob and repairing a master bedroom door and painting the edge of it. The revised invoice added \$21.25 in taxes and was submitted later after the work was done. The landlord confirmed that while the original invoice indicated to repair a master bedroom door and painting the

edge of it, he assumed this at his own cost and was not claiming this from the tenants. This item was replaced by garbage removal in the revised invoice. When questioned as to whether the garbage removal would have been the same cost as repairing and painting a master bedroom door, the landlord confirmed that it was, but was unable to give a breakdown of the specific amount for this task.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on a balance of probabilities, that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlord provided an invoice, but not a receipt, for the carpet cleaning, in the amount of \$194.25. The tenants admitted that the carpets were dirty when they left the rental unit and they were unable to clean them before leaving. The tenants agreed to the landlord's claim of \$194.25 for carpet cleaning. Therefore, I find that the landlord is entitled to \$194.25 for carpet cleaning charges, from the tenants.

The landlord claims that the tenants owe \$132.20 total for hydro and gas utilities from July to October 2014. The landlord submitted one hydro bill of \$216.76 from July 18 to September 17, 2014, indicating that the tenants owe \$65.03 for their 30% share. The landlord submitted a gas bill of \$55.57 from August 26 to September 23, 2014, indicating that the tenants owe \$16.67 for their 30% share. The tenants agreed that they owe \$65.03 for hydro and \$55.57 for gas for the above periods. Accordingly, I find that the landlord is entitled to \$81.70 for gas and hydro utility charges, from the tenants.

The landlord claims that the tenants owe an additional \$50.50 total for hydro and gas. He claims that the tenants owe \$34.95 for their 30% hydro share from September 18 to October 20, 2014, from the total bill of \$116.49. He claims that the tenants owe \$15.55 for their 30% gas share from September 24 to October 20, 2014, from the total bill of \$51.84. The landlord estimated the above amounts based on previous hydro and gas bills and pro-rated them until October 20, 2014, when he said the tenants vacated the rental unit. The landlord did not submit utility bills for the above dates, even though he

claimed he would have received the bills in October and November 2014. The landlord filed his application on December 5, 2014, and submitted other additional evidence to the tenants on December 15, 2014, but said that he did not think to serve the additional utility bills. The tenants dispute that they owe these utility bill amounts as they did not receive any invoices from the landlord. I find that the tenants did not have any notice of amounts they potentially owed for gas and hydro utility bills. Although the tenants owe a 30% share of utilities as per the tenancy agreement, no actual utility bills for the above dates have been provided by the landlord, who is the only one who has access to these bills. Even though the landlord provided an estimated calculation in his application, no bills were provided to show the actual amounts and whether they were paid by the landlord. The landlord had the ability to submit these bills well before this hearing, but chose not to do so. Therefore, I find the landlord is not entitled to \$50.50 for additional hydro and gas utility charges, as noted above.

The landlord claimed that he pro-rated the rent owed by the tenants, from October 1 to 20, 2014, in the amount of \$700.00. When questioned as to his calculations based on a 30-day period when October has 31 days, the landlord revised his claim to \$677.41 ( $\$1,050.00 / 31 \text{ days} \times 20 \text{ days}$ ). The landlord later stated that he was only claiming from October 1 to 16, 2014, as he wanted to give the tenants the benefit of the doubt that they vacated the rental unit on October 16, 2014. The tenants claim that they moved the last of their furniture on October 16, 2014, as per their email to the landlord on that date. As per section 26 of the Act, the tenants are required to pay their rent, regardless of whether the landlord complies with the Act, regulations or tenancy agreement. The tenants occupied the rental unit from October 1 to 16, 2014 and admit that they did not pay rent for this period. Therefore, I award \$541.94 ( $\$1,050.00 / 31 \text{ days} \times 16 \text{ days}$ ) in unpaid rent to the landlord from October 1 to 16, 2014.

The landlord claims \$446.25 for having to repair damage to walls, repainting two entire walls, completing spot paint minor repairs with color-matched paint, replacing one stainless steel closet knob and to remove garbage debris from the back lane. There is no breakdown for the amount charged for each task or any hourly rates indicated. The invoice simply states the types of jobs to be completed and a total of \$425.00 plus tax. The landlord did not provide a receipt from the contracting company, indicating that he paid for their work. He stated that the account was paid in full and the contractor had signed the bottom of the invoice, which the landlord provided with his application.

The landlord provided a photograph of one board that he says was left behind by the tenants and had to be removed and disposed of by the company. The landlord did not provide sufficient proof that the tenants caused this damage. The photograph was taken on November 23, 2014, well after the move-out inspection, the board was not

noted in the move-out inspection report and the board is located on the outside of the house where anyone could have placed it after the tenants vacated. Further, the new tenants could have placed the board there and there is no specific cost for this garbage removal. Accordingly, I decline to award any damage costs to the landlord for this garbage removal.

The landlord also claims that the walls in the master bedroom and kitchen had to be repainted and spot-treated for holes and some black marker spots. He provided a photograph of a few small holes in the master bedroom and hallway of the rental unit. The landlord provided photographs of barely-visible spots and one streak, which he says are from a black marker. The tenants dispute that they owe any painting costs to the landlord. They say that there were some small holes made in the wall for their television. The tenants state that they did not cause any black marker spots on the walls and did not allow their children to draw on the walls or use markers. The landlord did not provide sufficient proof that the tenants caused this damage. The photograph was taken on November 23, 2014, well after the move-out inspection, the new tenants could have caused this damage, and there is no specific cost breakdown for this repainting. Further, the holes are tiny and the marker spots are barely visible. Accordingly, I decline to award any painting costs to the landlord.

The tenants admit that they have the missing closet doorknob in their possession, a cost that was claimed by the landlord in the above invoice. When questioned as to the cost or estimate for replacing this one doorknob, the landlord stated that he did not know and requested that I consider the total amount of \$446.25 on the contracting company's invoice, rather than a specific breakdown for each work task completed. Accordingly, I award the landlord a nominal cost of \$20.00 to replace and install this doorknob.

The landlord testified that he continues to hold the tenants' security deposit of \$525.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was mainly successful in his application, he is entitled to recover the filing fee of \$50.00 from the tenants.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$362.89, against the tenants, as follows:

<b>Item</b>	<b>Amount</b>
Rent from October 1 to 16, 2014	\$541.94
Gas and hydro utility charges	81.70
Carpet cleaning charges	194.25
Replacing closet doorknob	20.00
Less Security Deposit	-525.00
Recovery of Filing Fee for this application	50.00
<b>Total of Above Items</b>	<b>\$362.89</b>

The landlord is provided with a monetary order in the amount of \$362.89 in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: January 13, 2015

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Residential Tenancy Branch



