



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damages to the unit – Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The following are undisputed facts: The tenancy of an upper unit started on September 1, 2003. The tenancy was expanded to include the basement suite on November 1, 2006. Rent of \$2,489.48 for both units was payable monthly on the first day of each month. The Landlord collected \$750.00 as a security deposit on September 1, 2003 and \$350.00 as an additional security deposit on November 1, 2006. The Parties did not carry out a move-in inspection. The Tenant disagreed with the move-out inspection. The Tenant owes unpaid rent for July 2014.

The Landlord claims unpaid July 2014 rent.

The Landlord states that the Tenant left the unit damaged and claims \$1,389.00 for the cost of restoring the property back to its initial state. The Landlord refers to a list of items set out in a letter to the Tenant. It is noted that there are no costs indicated in the letter. The Landlord states that the Tenant removed two light fixtures during the tenancy and that the Landlord found them in a box with missing components, some of which were gold. The Landlord states that the repairs have not yet been done to the fixtures nor has an estimate been obtained for this repair as it has been difficult to find the components. The Landlord states that the light fixtures were from a matching set of four and that they could not be replaced by an unmatched set. The Landlord states that the Tenant also removed countertops and a counter leaving missing tiles and the subfloor exposed. The Landlord states that the kitchen cabinets are solid oak and were damaged while left stored in the garage and garden shed by the Tenant. The Landlord states that they were replaced right away. The Landlord states that the kitchen tiles have not been replaced as no matching tiles have been found to date. The Landlord claims the cost of repairs of the Jacuzzi. The Landlord provided no photos, receipts invoices or estimates for these repairs and I note that no mention of a Jacuzzi is made in the Landlord's materials.

The Landlord also claims the following costs for repairs that were made:

- \$977.55 for the cost of painting two bedrooms. The Landlord states that the entire unit was painted 2 or 3 years ago and that without permission the Tenants later painted 2 rooms in the upper unit with "loud colors". The Landlord also states that the basement ceiling was stained from water damage and required paint. The Landlord states that the work was completed.
- \$114.50 for the cost of cleaning the carpet. The Landlord states that it is not known whether the Tenants had cleaned the carpet but that it was left dirty;
- \$262.50 for the cost of power washing the outdoor deck and railings;
- \$78.75 for the cost of cleaning the ovens in the unit. The Landlord states that the cleaning was done by a cleaning company;
- \$60.10 for the cost of sanding all patched walls. The Landlord states that he paid a fellow to do this job.

The Landlord states that all the above costs claimed were based on estimates and that the Landlord has receipts for the costs. No photos, receipts, invoices or estimates for the above claims were provided by the Landlord for this hearing.

The Landlord states that the Tenant had agreed to restore the unit before the end of the tenancy but failed to do so and given the extent of the damages to the unit the Landlord was unable to rent out the unit for August 1, 2014. Specifically the Landlord states that the unit could not be rented due to the gaping holes left by the removed light fixtures, the removal of the counters and an inability to replace the missing kitchen tiles with matching tiles. The Landlord states that the lower unit only required minor repairs such as the painting of the ceiling and replacement of bathroom tiles. The Landlord states that the lower unit was rented on September 1, 2015 for \$1,000.00 per month in rent. The Landlord states that the upper unit has still not been rented. The Landlord claims lost rental income for August 2014.

The Tenant states that the upper unit was cleaned to move-in condition at the end of the tenancy, including the cleaning of the carpets, ovens and deck. The Tenant argues that power washing of the outdoor deck would be the Landlord's responsibility. The Tenant

provided witness letters of the cleaning done at the unit. The Tenant states that the holes left by the light fixtures were only 3" each and were covered by the Tenants light fixtures that they left. The Tenant submits that there were no damages to the fixtures that had been stored from the onset of the tenancy. The Tenant states that all the picture holes were patched at the end of the tenancy and that maybe one wall with a couple of patches was not sanded. The Tenant doubts that any painter would charge the amount claimed by the Landlord to sand these areas.

The Tenant does not dispute the agreement to reinstall the original fixtures before the end of the tenancy but states that they ran out of time. The Tenant states that they do not dispute a reasonable cost of \$60.00 to reattach the fixtures.

The Tenant states that the kitchen cupboard that was removed was a stand-alone piece that was not attached to either the wall or the floor. The Tenant states the item was stored in the garage with the Landlord's permission and in the area of the garage that was under the Landlord's possession and control. The Tenant states that another cupboard fell off the wall during the tenancy and that when the Landlord was informed the Landlord told them to throw it away. The Tenant states that they stored this item in the shed and dispute the Landlord's claim that the cupboards are solid oak. The Tenant states that the cabinets are also original to the house that is well over 25 years.

The Tenant does not dispute that they painted one wall a different color without the Landlord's permission and do not dispute the amount of \$100.00 in compensation. The Tenant states that it had no idea what the Landlord was claiming in relation to the claim for \$1,389.00. The Tenant provided written submissions and photos in response to the Landlord's claims.

### Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy

agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Based on the undisputed facts that rent was not paid, I find that the Landlord has substantiated its claim for **\$2,489.48**.

The Landlord's evidence to support all the remaining damages and costs being claimed are woefully inadequate. The Landlord provided no photos, no estimates and no receipts. Given that the Tenant has not disputed the agreement to return the fixtures at a cost of **\$60.00** or the painting of one wall without permission at the cost of **\$100.00**, I find that the Landlord has only substantiated this amount. Given the lack of a move-in condition report and accepting the Tenant's supported evidence of the cleanliness of the unit and the storage of the cupboards at the end of the tenancy I find that the Landlord has not substantiated on a balance of probabilities that the Tenant caused the unit not to be rented for August 2014 and I dismiss this claim. Considering the lack of particulars on the Landlord's claim for "restoring the unit" in addition to the lack of supporting evidence, I find that the Landlord has failed on a balance of probabilities to substantiate that the Landlord has an entitlement to the remaining monetary amounts claimed and I dismiss these claims.

The Landlord's entitlement is **\$2,649.48** and given that there was some merit to the Landlord's application I find that the Landlord is only entitled to half the \$100.00 filing fee paid in the amount of **\$50.00** for a total entitlement of **\$2,699.48**. The interest payable on the original security deposit of \$750.00 from September 1, 2003 to October 31, 2006 is **\$3.13**. The interest payable on the increased security deposit of \$1,100.00 from November 1, 2006 to this date is **\$34.21** for a total interest of **\$37.34**. Deducing the total security deposit of \$1,100.00 plus interest of \$37.34 from the Landlord's entitlement leaves **\$1,562.14** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest in the amount of \$1,137.34 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$1,562.14**. If necessary, this order may be filed in the Small Claims 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: March 11, 2015

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Residential Tenancy Branch

