



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for damages to the unit, for money owed or compensation under the Act, and for an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Preliminary matter

At the outset of the hearing legal counsel for the tenant requested an adjournment in order to file evidence. Counsel submits that he was just hired by his clients and due to their miscommunication, as there was some confuse as to why the landlord only filed the claim against the tenant’s guarantor that they did not file any evidence in response to the landlord’s application.

The landlord objected to the adjournment. The landlord stated that the respondent was notified of the hearing in August 2014, and it would be unfair to have this matter delay any further.

In this case, I find an adjournment not appropriate. The landlord’s application was filed and served on the respondent in August 2014. The respondent has sufficient notice of the hearing and had sufficient time to file evidence in accordance with the Residential Tenancy Branch Rules of Procedures. I find any further delay would be unfair and prejudicial to the landlord. Therefore, the tenant’s application for an adjournment is denied.

The counsel for the tenant confirmed receipt of the landlord’s evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties agreed that MY entered into a fixed term tenancy which began on May 1, 2014 and was to expire on April 30, 2015. Rent in the amount of \$2,500.00 was payable on the first of each month. The tenant paid a security deposit of \$1,250.00.

MG completed an application for tenancy on April 5, 2014, and signs the tenancy agreement as a guarantor for the tenant. The tenancy ended on or about June 30, 2014.

The landlord claims as follows:

a.	Loss of rent for July 2014	\$2,500.00
b.	Broken camel	\$ 50.00
c.	Broken brass floor register	\$ 25.00
d.	Touch up painting	\$ 212.63
e.	Unclogging garburator	\$ 63.00
f.	Broken patio umbrella	\$ 110.88
g.	Cleaning fee	\$ 300.00
h.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$3,311.51</b>

### Item a - Loss of rent for July 2014

The landlord testified that the tenant breached the fixed term agreement by ending the tenancy early. The landlord stated that the tenant had early indicated that she was not happy and wanted to end the tenancy, however, the tenant was informed that she was under a fixed term and it was her responsibility to sublet if she wanted to end the tenancy earlier.

The landlord testified that on June 2, 2014, she received an email from MG the tenant's guarantor. The landlord stated that the email indicated that the tenant was not happy due to some issues such as smoking, drinking, and fighting in the lower rental unit by the other occupants. The email further indicated that the tenant MY gave notice earlier to end the tenancy. The landlord stated that she responded to the email informing the guarantor that she had not receive notice to end the tenancy and any notice to end the tenancy must be in writing and if notice is provided that does not end their obligations under the fixed term.

The tenant MY testified that on June 9, 2014, she provided the landlord's son with a notice to end the tenancy effective June 30, 2014. The tenant stated that she ended the tenancy due to a breach of a material term of the tenancy agreement for smoking and fighting.

The landlord denied that there was a breach of any material terms.

#### Damages to the unit

##### *Item b - Broken camel*

The landlord testified that the tenant broke the head of a camel as they had found it taped together at the end of the tenancy. The landlord stated the head likely broke due to tenant's son playing ball in the house. The landlord seeks to recover the amount of \$50.00.

The tenant testified that they did not cause damage to the camel. The tenant stated that the camel was in the same condition as it was when they took possession of the rental unit.

##### *Item c - Broken floor register*

The landlord testified that the tenant broke the brass floor register. The landlord stated that it looked like someone had step on it as it was dented. The landlord seeks to recover the amount of \$25.00.

The tenant testified that she does not even remember the floor register. The tenant stated that if it was broken it would have been that way when the tenancy commenced.

##### *Item d - Repairs to walls*

The landlord testified that the tenant caused damage to the wall which had to be touched up with paint. The landlord stated that she did not take any pictures of the damage to the walls and the receipt should be sufficient. The landlord seeks to recover \$212.63

The tenant testified that there were little chips in the walls when the tenancy commenced.

#### Item e - Garburator

The landlord testified that the tenant plugged the garburator with shrimp shells and she had to pay her son to take the garburator apart and remove the blockage. The landlord seeks to recover the amount of \$63.00. Filed in evidence is a receipt.

The tenant MY testified that they had only used the garburator a few times before it became plugged and then only for a second or two. The tenant stated that that it was not plugged by shrimp shells as there was chop stick found inside. The tenant stated they do not use chop sticks and it must have been from the previous tenant.

#### Item f – broken patio umbrella

The landlord testified that the tenant was neglectful by not putting the patio umbrella in the down position and the wind caught the umbrellas throwing it to the ground and smashing it. The landlord stated that the tenant was informed at the beginning of the tenancy that the umbrella must be in the down position when not in use.

The tenant testified that the umbrella was place on the patio by the landlord. The tenant stated that they never used the umbrella during their tenancy and were not neglectful.

#### Item g – cleaning costs

The landlord testified that the tenant did clean the rental unit properly at the end of the tenancy as there was food in the refrigerator which had to be removed and cleaned. The landlord stated there was also cooking flour spilt in the kitchen cupboard and everything needed to be cleaned.

The tenant testified that she hired a professional cleaner to clean the rental unit and it was cleaned when they vacated the premise.

The landlord argued that the tenant is being deceitful as they acknowledged in writing that \$300.00 for cleaning could be deducted from the security deposit in their text message dated July 20, 2014. Filed in evidence is a copy of the text message which supports the tenant gave the landlord permission to retain \$300.00 from security deposit for cleaning.

#### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

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.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

#### Loss of rent for July 2014

How to end a tenancy is defined in Part 4 of the Act.

#### **Tenant's notice**

*45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

- (a) is not earlier than one month after the date the landlord receives the notice,*
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
- (c) is the day before the day in the month, or in the other period on which the tenancy is based,*

...

*(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has **not corrected the situation within a reasonable period after the tenant gives written notice of the failure**, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*

In this case, the evidence of the tenant was that they ended the tenancy based on a breach of a material term of the tenancy agreement for smoking and fighting by the occupants in the lower rental unit.

However, the tenant did not comply with section 45(3) of the Act, by giving the landlord written notice of what they alleged to be a breach of material term of the tenancy agreement and then providing the landlord with a reasonable time to correct the situation. Rather the tenant gave notice on June 9, 2014, to the end the tenancy on June 30, 2014. Further, the landlord denied that there was a material breach of the tenancy agreement.

I find the tenant has failed to prove that they complied with the provision of the Act, to end the tenancy based on a breach of a material term. Therefore, I find that the tenant has breached the Act as the earliest date they could have legally ended the tenancy was April 30, 2015, as stated in the tenancy.

In this case, there was evidence that the rental unit was advertised for rent as the tenant was attempting to sublet. Those advertisements continued by the landlord, until the landlord found a new renter and the new renter entered into a tenancy agreement commenced on August 1, 2014. I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for July 2014, in the amount of **\$2,500.00**.

#### Damage to rental unit

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

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

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

#### Items b, c, and d

In this case, the landlord has alleged the tenant broke the camel, broke the brass floor register and chipped the walls and touch up painting was required. The tenant denied this damage was caused by their actions.

Under section 23 of the Act the landlord is to complete a move-in condition inspection report with the tenant at the start of the tenancy. The move-in condition inspection report is evidence of the stated of repair and condition of the rental property that the parties agreed to at the start of the tenancy. Although the landlord has filed an inventory list, that list does not constitute a move-in condition inspection.

Since both parties have provided a different version of events and both versions are equally probable, I find without further evidence from the landlord that they have failed to prove the damage was caused by the action or neglect of the tenant. A receipt for work done is not proof that the damage was caused by the tenant. Therefore, I dismiss this portion of the landlord's claim.

#### Item e - unclog garburator

The evidence of the landlord was the garburator was plugged with shrimp shells. The evidence of the tenant was that the plugged was caused by a chop stick that must have been from the previous tenant.

Although the landlord has filed a receipt, that receipts provides no details of what was found to plug the garburator and the receipt is date May/14, [no specific date] which makes the tenant's version possible. As a result, I find the landlord has failed to provide sufficient evidence to support that the action or neglect of the tenant caused the garburator to be plugged. Therefore, I dismiss this portion of the landlord's claim.

#### Item f - broken patio umbrella

The patio umbrella was broken when a gust of wind blew it off the balcony smashing it on the ground. The evidence of the landlord was the damage was caused by the neglect of the tenant when they failed to close the umbrella. The evidence of the tenant was that they did no use it.

Since both versions are possible, I find without further evidence from the landlord, such photographs of the patio umbrella that they have failed to provide sufficient evidence to prove the damage was caused by the neglect of the tenant. Therefore, I dismiss this portion of the landlord's claim.

#### Item g – cleaning cost

Although the parties have provided a different version of events, I find it not necessary for me to consider the merits. Since the tenant agreed in writing that the landlord could retain the amount of \$300.00 for cleaning. Therefore, I find the landlord is entitled to recover the cleaning cost in the amount of **\$300.00**.

I find that the landlord has established a total monetary claim of **\$2,850.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,250.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,600.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 24, 2015

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Residential Tenancy Branch