



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUNDEN MANAGEMENT LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord's agent (the landlord) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The original hearing held on March 03, 2015 was adjourned at the request of both parties to allow time for additional evidence to be sent. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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 a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this tenancy originally started on October 01, 2011 and was renewed each year to July 01, 2013 for a fixed term tenancy which provides that the tenant must vacate the rental unit on June 30, 2014. The tenancy ended on August 01, 2014. Rent for this property was \$2,200.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$1,100.00 on September 08, 2011.

The landlord testified that the tenant failed to pay all the rent for July, 2014. The landlord had previously applied for a Direct Request Proceeding in June, 2014 when the tenant failed to pay rent for June. An Order of Possession was issued along with a Monetary Order for June's rent. The landlord agreed to extend the time the tenant had to vacate the unit until July 31, 2014, instead of enforcing the Order of Possession, on the understanding that the tenant would pay the Monetary Order for June's rent and rent for July. The tenant paid \$500.00 on July 15, 2014 and the landlord seeks to recover the balance of \$1,700.00 for July.

The landlord testified that the tenant had not given the landlord any indication that they were vacating on July 31, 2014 and did not vacate until August 01, 2014. The landlord had a running advert to rent the unit on an internet site and on their own website the unit was listed in May, 2014. The unit was not in a suitable condition to allow viewings to take place with potential tenants; consequently the landlords were unable to re-rent the unit for August 01, 2014. The landlords seek a loss of rental income for August, 2014 of \$2,200.00. The landlord testified that they no longer manage the property for the owner but believes the unit was not re-rented until January, 2015.

The landlord testified that the tenants failed to remove all of their belongings from the property. The landlord referred to photographic evidence showing the tenant's belongings in the unit and on the property. The landlord seeks to recover \$262.00 to have the tenant's property removed and has provided an invoice for this work in documentary evidence.

The landlord testified that the tenant failed to leave the rental unit reasonably clean. The kitchen, three bathrooms, the walls, the floors and three bedrooms all had to be cleaned. A cleaning company was engaged to do this work and they completed 19 hours of cleaning between September 14 and September 20, 2014. The landlord seeks to recover \$518.70 for this work and has provided both photographic evidence and the cleaning invoice in documentary evidence.

The landlord testified that some repairs and replacement fixtures had to be completed at the end of the tenancy by a service company. This included replacement of a shower rod; the furnace filter; 75 light bulbs; the bathroom closet door, a half bath drawer and the TV cabinet door all required adjustment; The basement window was off its hinges; the heat register in the master bedroom was not connected; a bathroom mirror was missing; the front door had to be washed; the old hotwater tank had to be removed when the tenants left it on the patio; a light cover had to be reinstalled in the master bedroom; and the house taps had to be winterized.

The landlord testified that the basement window was taken off when the tenant gained access to the property after the locks had been changed by the landlord. A bathroom mirror and a shower rod were in place at the start of the tenancy; however, the tenant was given a rent rebate to replace these items during the tenancy and they should have been left by the tenant when he moved out. The tenant changed the hotwater tank and was reimbursed for this work but did not remove it from the property. The landlord testified that all this work took 12 hours at \$40.00 an hour plus tax. The landlord seeks to recover \$504.00 from the tenant and has provided some photographs and the invoice in documentary evidence.

The landlord seeks to recover the cost to replace light bulbs. 75 blubs were purchased at a cost of \$155.05; however, some of these were not needed and were returned to the store. The landlord seeks to recover the balance of \$123.95 and has provided the receipt in documentary evidence. The landlord seeks to recover the cost of the mirror at \$55.45 and the shower rod at \$27.89. The landlord also seeks to recover the cost for a

door bolt which was left broken on the basement door at a cost of \$15.90. The landlord has provided receipts for these items in documentary evidence.

The landlord testified that the yard was left in a poor condition. In June or July, 2014 the owner received a letter from the City concerning bylaw infractions about the state the yard was in. This property is just under an acre. If the owner did not see to the cleanup then the City would do the work and bill the owner. This letter was sent to the tenant and the tenant informed the landlord that they had spoken to the City and the cleanup would be done by August 01, 2014. The landlord testified that the tenant failed to comply and the landlord had to clean the yard. The landlord seeks to recover the cost for this work of \$2,205.00. This included the removal of yard clippings dumped by the tenant over the fence and oil containers left on the property. The landlord has provided photographs and the invoice in documentary evidence.

The landlord testified that they have amended their claim from \$8,700.00 to \$3,895.23 and this included the \$50.00 filing fee from the Direct Request proceeding, the \$100.00 filing fee for this proceeding and registered mail costs.

The landlord seeks an Order to keep the security deposit of \$1,100.00 to offset against their monetary claim. The landlord testified that the previous property manager who has since retired from the company gave the tenant two opportunities to attend the move out inspection of the property at the end of the tenancy; it was scheduled for July 31, 2014 and the property manager, a handyman and the tenant were present. The tenant asked for an extension of time and was given another time of 5.00 p.m. that day. The property manager went back and the tenant was still cleaning out the garage. The tenant walked around the unit with the property manager but refused to sign the inspection report.

The tenant agreed that they owe rent for July, 2014 of \$1,700.00. the tenant disputed that they owe rent for August, 2014 as the tenant testified they had vacated on August 01, 2014 but the property manager gave them until August 04, 2014 to come back to clean the unit and remove the rest of their belongings. The tenant testified that when

they came back the locks had been changed and they could not get back into the unit to do the final cleanup. The tenant testified that there was never an agreement about which day they would vacate the rental unit.

The tenant testified that the old property manager had agreed they could come back if everything was not done on August 01, 2014. The handyman was not there with the property manger on August 01, 2014, no move out inspection was done with the tenant and the tenant was not offered an inspection report to sign.

The landlord testified that the handyman was there on August 01, 2014 to change the locks; however, the tenants were given until August 02, 2014 to finish clearing the house and so the property manager and handyman returned on August 02, 2014. The tenants did not show up on the August 02, 2014 and the locks were changed on that date. The landlord testified that she was not present but as she employs the handyman she knew he was there as he submitted his time sheet for reimbursement. The handyman purchased the locks at 8.07 a.m. on August 02, 2014 and changed the locks at 09.00 a.m.

The tenant disputed the landlord's claim for cleaning. The tenant testified that they did not finish cleaning the unit but as they were denied entry on August 04, 2014 as agreed by the old property manager they could not get into the unit to do the work.

The tenant disputed the landlord's claim for the shower rod, the mirror and the light bulbs. The tenant testified that the mirror and shower rod and 20 light bulbs were missing at the start of the tenancy. The tenant purchased these and removed the mirror and shower rod as they belonged to the tenant at the end of the tenancy. The tenant denies receiving a rent rebate to cover these items.

The landlord agreed that there is no record of the tenant receiving a rent rebate. The landlord testified that the tenant did however, rent the house in an "as is" condition and there were things missing at the start of the tenancy.

The tenant testified that the tenancy agreement states the furnace filter must be changed every three months. This was last changed by the tenant in April, 2014. The tenant disputed the landlord's claims to adjust the closet door, the bathroom drawer and the TV cabinet doors these were all fine when the tenant lived in the unit. The tenant disputed that he removed the basement window and testified that they never went back into the house after the locks were changed. The tenant disputed that he disconnected the heat register and if it was disconnected it was never noticed during the tenancy as there was heat in the master bedroom. The tenant disputed the cleaning of the front door and testified that this was red sticky tape left over from a City notice posted on the door for a non-occupancy order before the tenant occupied the unit. The tenant disputed the landlord's claim for the removal of the hotwater tank. The tenant testified that they replaced the tank for the landlord and the landlord was supposed to remove the tank but failed to do so. The tenant disputed the landlord's claim for the light cover as this was not fixed in place at the start of the tenancy or during the tenancy and was left on the floor by the tenant when he moved out. The tenant also disputed the landlord's claim for winterizing the taps as this is not the tenant's responsibility. The tenant testified that the bolt on the basement door was already broken when they moved into the unit and it states this on the move in condition inspection report. This occurred when the police had to kick in the door when the unit was previously occupied as a grow op.

The tenant testified that when they turned up on the agreed upon date of August 04, 2014 they had eight people to help them clean the yard. As the landlord had locked the tenant out and reneged on that agreement the tenant did not do any further work and they thought they may be accused of trespassing.

The tenant testified that with regard to the items the landlord stated had to be removed and cleaned; much of this stuff was in the house when the tenants moved in such as paint cans, flower planters, panes of glass, a dishwasher, Styrofoam, wooden doors from an entertainment centre. The tenant referred to their photographic evidence taken of the property at the start of the tenancy which shows some of these items in place.

The tenant testified that when this property management company took over they did not do another inspection report and had no idea of the condition of the unit when the tenant moved in. The unit was dirty and was cleaned by the tenants, the yard had not been looked after and this is all documented on the move in report.

The landlord agreed that the unit had no fridge or stove and was not in a great condition when the tenant moved in.

The tenant asked the landlord if they spoke about renewing the lease and to get the rent reduced because the pool was never fixed by the landlord. The landlord responded that this is the reason they no longer manage the property. The tenant asked the landlord if they had lived there for three years without any maintenance being done. The landlord responded that if the owners will not agree to do the work there is nothing the property management company can do about it. The tenant asked the landlord if the owner was willing to drop the rent to \$1,800.00. The landlord responded that she does not recall that.

The tenant disputed the landlord's claim to keep the security deposit.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The tenant does not dispute that rent for July of **\$1,700.00** is outstanding. I therefore uphold the landlord's claim to recover this outstanding rent.

With regard to the landlord's claim to recover a loss of rent for August, 2014; I refer the parties to the Residential Tenancy Policy Guidelines #3 which states, in part, that even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner. The landlord in this case had an Order of Possession for two days after service upon the tenant. The landlord extended the time the tenant had to vacate until July 31, 2014 and had been making some attempts to re-rent the unit since May, 2014. In normal circumstances I would consider the landlord's claim to recover a loss of rent for August as the landlord has made reasonable attempts to re-rent the unit; however, the landlord claims they could not show the unit due to its condition caused by the tenants. I have reviewed the move in condition inspection report and photographic evidence provided by the tenant and find the unit does not appear to be in a worse condition than it was at the start of the tenancy when this tenant rented the unit in an "as is" condition. The landlord cannot at the end of the tenancy expect the tenant to provide the rental unit in a better condition than it was at the start of the tenancy so the landlord can re-rent the unit. I therefore dismiss the landlord's application to recover a loss of rent for August, 2014 without leave to reapply.

With regard to the landlord's claim for removal of the tenant's belongings; the tenant was fully aware that they had until July 31, 2014 to provide vacant possession of the rental unit in accordance to the letter provided by the landlord. On July 31, 2014 the tenant had still not completed their move as required. The tenant argued that the property manager had given the tenant until August 04, 2014 to remove their belongings and clean the property. The landlord stated that the property manager at that time has since retired and has provided an unsigned statement saying she gave the tenants until August 02, 2014 to return to the property and the tenants failed to do so. I am satisfied from the evidence presented that the tenants overheld at the unit past the July 31, 2014 date to vacate. I am also satisfied that the property manager gave the tenant until August 02, 2014 to return to the property and the tenant failed to return until August 04, 2014. Due to the above I must find in favor of the landlord's claim to remove the tenant's



belongings from the property; however, I am not satisfied that all of the items removed belonged to the tenant as the tenant's evidence shows that there were many items at the property at the start of the tenancy. I therefore limit the landlord's claim to **\$131.00**.

With regard to the landlord's claim for cleaning the unit; the tenant does not dispute that the unit was not fully cleaned at the end of the tenancy; however, there is also evidence to show the unit was not clean at the start of the tenancy. A landlord has an obligation under s. 32 of the *Act* to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. The landlord cannot expect a tenant to leave a rental unit in a better condition than it was in at the start of the tenancy or to charge a tenant to clean the unit when clearly it was not clean at the start of the tenancy. This section of the landlord's claim for \$518.70 is dismissed without leave to reapply.

With regard to the landlord's claim for repairs; I have considered each part of this claim and find there was no shower rod, mirror and every light bulb in the property at the start of the tenancy. The tenant purchased a shower rod, a mirror and some light bulbs. There is no evidence the tenant was paid to replace these items through a rent reduction or any other means. I therefore find the tenant is entitled to remove these items from the unit at the end of the tenancy and cannot be held responsible for missing or burnt light bulbs as the tenant replaced 20 at the start of the tenancy and the number is undisclosed as to how many had to be replaced in the end after a number of bulbs were taken back to the store.

With regard to the replacement of the furnace filter; the tenant agreed that the tenancy agreement states the filter must be replaced every three months. The tenant testified it was last replaced in April, 2014. I therefore find the filter should have been replaced again at the end of July, 2014. Consequently, I find the tenant is responsible for a

replacement filter. The landlord has not provided a breakdown of costs for the filter; I therefore award the landlord a nominal amount of **\$10.00**.

With regard to the other repair work performed; there is insufficient evidence due to a lack of maintenance in the unit by the landlord over the period of the tenancy that the tenant can be held responsible for adjustments to doors or drawers, to the heat register to re-install the light cover, or to winterize the house taps. The landlord has insufficient evidence to show that the front door cleaning was any more than the removal of tape left by the non-occupancy order from a previous tenancy, or that the tenant agreed to remove the hotwater tank from the property. This section of the landlord's claim is dismissed without leave to reapply.

Subsequently the landlord's claim to recover costs to purchase the mirror, the shower rod and 75 light bulbs (some of which were returned) is also dismissed without leave to reapply.

With regard to the landlord's claim to recover \$15.90 for a door bolt on the basement door; the move in report indicated that the door was already damaged prior to the tenant moving in. I therefore find there is insufficient evidence to show the tenant's actions or neglect caused further damage to the door bolt and this section of the landlord's claim is dismissed without leave to reapply. The landlord testified that the tenant must have removed the window to enter the unit after the locks were changed. The tenant disputed this claim. The landlord has the burden of proof to show the window was removed by the tenant. I find there is insufficient evidence from the landlord to prove this claim and therefore the landlord's claim to recover costs to replace the window are dismissed without leave to reapply.

With regard to the costs incurred to clean up the yard; the move in condition inspection report indicated that the yard had not been looked after prior to the tenant moving in. The landlord now seeks to recover \$2,205.00 from the tenant for yard clearance. The landlord referred to a letter from the City concerning a bylaw infraction concerning the

yard. The tenant also indicated in his testimony that they did not have the opportunity to clear their stuff out of the yard at the end of the tenancy or when they came back on August 04, 2014. The same principle applies as stated above concerning the cleaning of the house. If the yard was not in a looked after condition at the start of the tenancy then the landlord cannot expect it to be returned in a better condition at the end of the tenancy. The tenant agreed that some belongings were his in the yard. The tenant should have ensured his belongings were removed prior to July 31, 2014 and failed to do so. There is; however, no indication of the breakdown of the yard clearance invoice as to what work was done; consequently, I must limit the landlord's claim to **\$500.00**.

With regard to the reminder of the landlord's claim for a filing fee for the Direct Request Proceeding of \$50.00, registered mail fees to send hearing documents and the filing fee for this application. There is no provision under the Act for me to award a filing fee for a previous hearing, when a landlord applies for a Direct Request Proceeding they are not permitted to apply to recover the filing fee. There is no provision under the *Act* for costs to be awarded for service of hearing documents. These sections of the landlord's claim are therefore dismissed. The landlord's claim to recover the **\$100.00** filing fee for this application is upheld pursuant to s. 72(1) of the *Act*.

I Order the landlord to retain the security deposit of **\$1,100.00** pursuant to s. 38(4) (b) of the Act. This amount has been offset against the landlord's monetary claim. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for July	\$1,700.00
Removal of tenants belongings	\$131.00
Filter	\$10.00
Yard clearance of tenants belongings	\$500.00
Filing fee	\$100.00
Less security deposit	(-\$1,100.00)
<b>Total amount due to the landlord</b>	<b>\$1,341.00</b>

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the Act in the amount of **\$1,341.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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: April 08, 2015

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Residential Tenancy Branch

