



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LOCKE PROPERTY MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MNR, MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for loss of rent, for compensation under the Act and the tenancy agreement, for damage and cleaning of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord's Agent, D.E., appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

As the Tenant failed to attend the hearing, service of the Landlord's application materials was considered. D.E. confirmed that he served the Landlord's application materials onto the Tenant by registered mail sent September 17, 2014. He stated that the package was not picked up by the Tenant and was returned to the Landlord. The Landlord then resent their application materials, including the Notice of Dispute Resolution Hearing, in addition to the evidence submitted on behalf of the Landlord on March 23, 2015; the Landlord confirmed that the Tenant's wife signed for the registered mail on this second delivery.

Section 90 of the Act provides that documents served by registered mail are deemed received five days after mailing; a Tenant cannot avoid service by refusing registered mail. Pursuant to section 90 I find that the Tenant was duly served.

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

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord be entitled to retain the security deposit?

3. Is the Landlord entitled to return of the filing fee?

Background and Evidence

This tenancy began December 1, 2012. Introduced in evidence by the Landlord was a copy of the Tenancy Agreement signed October 31, 2012. The addendum to the Tenancy Agreement included nine separate clauses, including but not limited to the following:

1. Landlord acknowledges tenant may have one dog residing at dwelling.
2. Tenant agrees to be responsible for all pet damages in excess of the pet damage deposit.
- ...
6. Tenant responsible for utilities (electric, gas, water, telephone, internet/cable).
- ...
8. Tenant responsible for yard maintenance including watering, p[r]uning, weed control, and snow removal from driveway
- ...

The Tenant paid a security deposit of \$900.00 as well as a pet damage deposit of \$900.00.

In the Landlord's written submissions, he wrote that on May 27, 2014 the Landlord noticed two dogs present in the dwelling in violation of the tenancy agreement. In early June 2014 the Landlord inspected the rental home and noted significant damages. As a result of the damages caused by the Tenant the Landlord issued a 1 Month Notice to End Tenancy for Cause with an effective date of July 31, 2014.

Also introduced in evidence was a document titled "Vacating Notice to Landlord" wherein the Tenant confirmed he intended to vacated the rental unit by August 30, 2014. On this document the Tenant also provided his forwarding address.

D.E. testified that although the Tenant vacated the property, the Landlord incurred substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenant.

The Landlord submitted in evidence a copy of the incoming condition inspection report, which was conducted on November 26, 2012 as well as the outgoing condition inspection report, which was conducted on September 1, 2014. D.E. confirmed that he provided the Tenant with two opportunities to inspect the rental unit, and the Tenant refused. D.E. testified that he was mindful of the possibility that the Tenant would dispute the contents of the outgoing condition inspection report and accordingly he had a friend, B, witness the inspection and confirm the contents of the report. Considerable damage was noted on the outgoing condition inspection report including several specific references to damage caused by the Tenant's pet (such as scratches on the doors and hardwood floors, pet odour and stains on the carpet and flooring and dog feces in the yard).

D.E. testified that the Landlord was so upset by the Tenant's treatment of the rental property that he decided to discontinue renting the home and instead listed the property for sale. When I asked if the Landlord was attempting to use this claim as an opportunity to recover the costs the Landlord incurred to *improve* the property for sale, D.E. testified that he was very careful not to claim any such improvements and included only the costs incurred to repair the damage caused by the Tenant.

The Landlord claims as follows:

unpaid electricity	\$749.55
Carpet cleaning	\$210.00
Rekeying the locks as the Tenant did not return keys	\$112.77
General house and yard cleaning done by the Landlord and the Landlord's friends	\$1,340.00
Cleaning supplies and light bulbs	\$232.65
Kitchen repairs including attaching hardware	\$39.90
Hardwood floor refinishing due to pet damage	\$4,733.40
Repair and repainting of door damaged by pet scratching	\$134.19
Yard clean up of pet feces	\$120.00
Filing fee	\$100.00
<b>Total claimed</b>	

The Landlord submitted receipts as well as photos of the damage in support of the above claims.

The Tenant did not submit any evidence and failed to attend the hearing.

### 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 Tenant. 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 took reasonable steps to minimize the damage or losses that were incurred.

The Tenant failed to attend the hearing and consequently did not dispute the allegations contained in the Landlord's application materials, evidence, or the testimony of D.E.

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

The evidence indicates that the Tenant did not clean the unit, or make necessary repairs, when the Tenant left, as required under the Act and the tenancy agreement. I find and this has caused losses to the Landlord. The evidence filed in support of the Landlord's application confirms that the Tenant and the Tenant's pets caused significant damage to the rental unit. I accept the undisputed testimony of D.E., and the outgoing condition inspection report, as evidence of the condition of the rental property at the end of the tenancy.

Section 7 of the Act states:

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Reproduced as written.]

I find that the Landlord, in enlisting the assistance of his friends, and doing much of the repair and clean-up of the rental unit himself, satisfied the duty to mitigate or minimize the damage or loss caused by the Tenant and the Tenant's pets.

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 **\$7,772.46** comprised of the above described amounts and the \$100.00 fee paid for this application.

I Order that the Landlord be permitted to retain the security deposit **\$900.00** and the pet damage deposit of **\$900.00** in partial satisfaction of the claim and I grant the Landlords a Monetary Order under section 67 for the balance due of **\$5,972.46**.

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

### Conclusion

The Landlord met the burden of proving the Tenant and the Tenant's pets caused damage to the rental unit. The Landlord is awarded the sum of \$7,772.46, which includes compensation for loss under the Act in addition to the \$100.00 filing fee. The Landlord is permitted to retain the security and pet damage deposit in the amount of \$1,800.00 and is granted a Monetary Order for the sum of **\$5,972.46**.

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: April 21, 2015

---

Residential Tenancy Branch

