



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, 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, 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; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

### Prior Applications

This tenancy was the subject of two earlier applications.

On 21 March 2013, the parties entered into a settlement agreement that was recorded as a decision of this Branch. The parties agreed that possession of the rental unit would return to the landlord on or before 31 May 2013.

On 11 July 2013, a prior arbitrator issued a decision awarding the landlord compensation for outstanding rent. In that decision the prior arbitrator found that the tenant had failed to pay rent of \$1,400.00, including April 2013 rent in the amount of \$950.00. The landlord was awarded her filing fee. This award was offset against the security deposit (\$475.00) held by the landlord. The net amount was awarded as a monetary order in the amount of \$975.00.

### Preliminary Issue – Tenant's Request to Adjourn

At the commencement of the hearing, the tenant indicated that she had not had time to submit her evidence. The tenant submitted that she required an adjournment in order to provide an email regarding a damaged towel rack that was sent to the landlord as well as text message correspondence between the tenant and landlord regarding responsibility over garbage removal.

The landlord's application was filed 12 September 2014. The notice of hearing for this application (including all evidence before me) was dated 16 September 2014. On 18 September 2014, the landlord sent the dispute resolution package by registered mail to the address at which the tenant resides. The mailing was delivered to the upper unit of the residential property. The tenant's current landlord was on vacation at the time. The house sitter in the upstairs unit accepted delivery of the registered mailing on 19 September 2014; however, the tenant testified that the mailing was not delivered to her until mid-October 2014.

The tenant testified that she had too much to do over the last six months and was not well. The tenant testified to various medical issues that she has. The tenant is currently taking medication with strong sedating effects. The tenant testified that it is difficult for her to leave her house. The tenant testified that her biological mother died in October 2014. The tenant testified that she was involved in two car accidents: one in September 2014 and one in November 2014. The tenant testified that she moved in with a new roommate who threatened her life in or about December 2014. The tenant testified that she will soon have to go in for surgery.

The landlord did not consent to the tenant's adjournment request and submitted that the adjournment would unnecessarily delay the proceedings.

*Residential Tenancy Branch, Rules of Procedure* (the Rules) rule 6.4 sets out the criteria for granting an adjournment:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- (a) the oral or written submissions of the parties;
- (b) whether the purpose for which the adjournment is sought will contribute to the objectives set out in Rule 1;
- (c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;

- (d) the degree to which the need for the adjournment arises out the intentional actions or neglect of the party seeking the adjournment; and
- (e) the possible prejudice to each party.

Rule 1 of the Rules sets out the objectives:

The objective of the Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

I informed the tenant at the hearing that I would not adjourn the hearing and that the hearing would commence as scheduled. Although I considered all the criteria in 6.4, I declined to adjourn the hearing as the tenant had ample notice of the hearing, the tenant had six months to make some arrangements for evidence to be submitted to this Branch, the evidence proposed by the tenant would not have helped prove or disprove a material fact in the landlord's application, it would not be efficient to postpone the hearing, and it would unfairly prejudice the landlord to reschedule the hearing.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award for loss or damage arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

This tenancy began 1 November 2013. The tenancy ended on or about 14 April 2013. Monthly rent of \$950.00 was due on the first.

I was provided with a move in condition inspection report dated 30 October 2011. The move in inspection report is unremarkable other than a notation that the towel rod in the bathroom requires repairs.

The landlord testified that she delivered a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the tenant on 3 April 2013. The 10 Day Notice was served to the tenant by posting it to the tenant's door. The notice set out that the tenant was required to vacate the rental unit on or before 13 April 2013.

The tenant testified that she gave notice to move out of the rental unit for 30 April 2013.

The landlord provided the tenant with two opportunities to conduct a move out inspection with the landlord. The tenant was unable to attend at either time as she was experiencing a medical issue. The landlord conducted a move out inspection in the absence of the tenant on or about 18 April 2013. The move out inspection report notes that the rental unit was dirty, the towel rod required repairs, and the rental unit contained twelve bags of garbage.

The tenant admitted that she did not attempt to do any cleaning when she left because she was physically unable to do so. The tenant testified that she thought she had more time to complete the cleaning. The landlord testified that the tenant did not give any indication of intent to clean.

The landlord provided me with photographs that show that the rental unit was unclean. The landlord provided me with a receipt dated 24 April 2013 in the amount of \$147.00 for cleaning services.

The landlord testified that the toilet seat was approximately 2.5 years old. The landlord provided me with a photograph. In that photograph the toilet seat can be seen to be taped together. The parties agreed that the seat was cracked. The tenant testified that at the beginning of the tenancy she asked the landlord if she could replace the toilet seat because it was "gross". The landlord declined to replace the toilet seat. The tenant testified that she was sitting on the toilet when it cracked.

The landlord provided me with a receipt dated 17 April 2013 in the amount of \$24.18 for the purchase of a toilet seat.

The landlord testified that the rental unit had city garbage pickup. The landlord testified that it was the joint responsibility of the tenant and occupants of the upstairs unit to bring the garbage can to the roadside for pickup. The landlord testified that the tenant communicated to the landlord that the tenant was having difficulties with taking the garbage to the roadside in the winter months. The landlord testified that the upstairs occupants agreed to take the garbage to the roadside. The landlord testified that the agreement was that during the non-winter months the tenant would assist with taking

the garbage to the roadside. The landlord testified that she did not see garbage accumulating near the garbage bin.

The tenant admitted that approximately one half of the garbage was related to her move out. The tenant testified that she was unable to take out her garbage because of her physical disability.

The landlord provided me with a receipt dated 24 April 2013 in the amount of \$150.00 for garbage removal services.

The landlord provided me with an invoice dated 17 April 2013. The landlord testified that the invoice was for both the purchase and installation of the towel rod.

The landlord testified that the towel rod appeared that it had been pulled from the wall. The landlord testified that the towel rod was 3.5 to 5 years old. The tenant testified that she never used the towel rod. The tenant testified that she noticed that the towel rack was loose less than one month after moving in to the rental unit. The tenant testified that she told the landlord that the rack was loose at that time.

The landlord claims for \$383.68 in compensation:

<b>Item</b>	<b>Amount</b>
Broken toilet seat	\$24.18
Garbage removal	150.00
Cleaning	147.00
Repairs to toilet seat and towel rack	62.50
<b>Total Monetary Order</b>	<b>\$383.68</b>

### Analysis

This tenancy ended 16 April 2014 by way of an uncontested 10 Day Notice.

Pursuant to section 32 of the Act, a tenant is responsible for cleaning the rental unit and certain repairs:

Subsection 32(2) of the Act requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains.

Subsection 32(4) of the Act provides that the tenant is not responsible for making repairs for reasonable wear and tear.

*Residential Tenancy Policy Guideline*, 1. Landlord & Tenant – Responsibility for Residential Premises” (Guideline 1) sets out the tenant’s responsibilities:

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*...

[emphasis added; footnote removed]

The tenant did not clean the rental unit when she left to a standard that complies with subsection 32(2) of the Act. The photographic evidence provided by the landlord provides strong evidence of this. On this basis, the landlord is entitled to recover for the costs associated with the tenant’s breach. The landlord has proven that she spent \$147.00 on cleaning. I accept that this represents the landlord’s true costs of returning the rental unit to standards that comply with subsection 32(2) of the Act. The landlord is entitled to recover \$147.00 for cleaning from the tenant.

Guideline 1 sets out the responsibility for garbage removal from a rental unit:

Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

While the landlord and tenant may have had an alternate arrangement regarding the removal of garbage during the tenancy, I find that there was no such arrangement that governed the end of the tenancy. Accordingly, the tenant was responsible for removing all the garbage within the rental unit at the end of the tenancy. The tenant's failure to do so was a breach of her responsibilities under the Act. The landlord has shown that she spent \$150.00 to remove the garbage. I accept that this represents the landlord's true costs of removing the garbage from the rental unit. The landlord is entitled to recover \$150.00 from the tenant for garbage removal.

The tenant testified that the toilet seat broke while she was sitting on it. I accept the tenant's testimony. I find that this use is precisely the use to which one would expect a toilet seat to be put. I find that the damage to the toilet seat occurred as a result of wear and tear. Pursuant to subsection 32(4) a tenant is not responsible for damage attributable to wear and tear. Accordingly, the landlord is not entitled to compensation for the broken toilet seat.

Section 21 of the *Residential Tenancy Regulation* (the Regulation) establishes that the condition move in inspection report is strong evidence to the state of the rental unit at the time the tenancy began. The condition move in inspection report set out that the towel rod required repair when the tenancy began. As the report is strong evidence of the state of the rental unit at the time the tenancy began, I find that the towel rod damage pre-existed this tenancy. The landlord is not entitled to recover for the cost of the towel rod replacement and repair.

As the landlord has been successful she is entitled to recover her \$50.00 filing fee from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$347.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Cleaning	\$147.00
Garbage Removal	150.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$347.00</b>

The landlord is provided with these orders 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 subsection 9.1(1) of the Act.

Dated: April 29, 2015

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Residential Tenancy Branch



