



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord – MNR, MND, MNSD, MNDC, FF

For the tenant – MNSD, RPP

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent or utilities; for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order to recover double the security deposit and for an Order for the landlord to return the tenant's personal property.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witnesses on their evidence. 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;
  - Damage to the unit site or property;
  - Money owed or compensation for damage or loss.
- Is the landlord permitted to keep all or part of the security deposit?

- Is the tenant entitled to a Monetary Order to recover double the security deposit?
- Is the tenant entitled to an Order for the landlord to return the tenant's personal property?

### Background and Evidence

The parties agreed that this tenancy started on October 01, 2013 for an initial fixed term of a year which then reverted to a month to month tenancy. The tenancy ended on November 30, 2014. Rent for this unit was \$460.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$230.00 plus a \$20.00 deposit for utilities. At a previous hearing the landlord was awarded the filing fee and instructed to take that from the security deposit held in trust. This makes the amount of the security deposit held in trust at this time of \$200.00. There have been a number of previous hearings held between these parties and I have listed the relevant file numbers on the front cover as some aspects cross over on this application and as some of these matters have been previously dealt with I will not deal with them again as the principal of Res Jucatia applies.

### **The landlord's application**

The landlord testified that the tenant owed utilities of \$50.62. The landlord withdraws this section of her claim at the hearing.

The landlord testified that the tenant failed to leave the rental unit in a reasonable clean condition. The landlord testified that the tenant was given two opportunities to attend the move out condition inspection but declined to do so. The tenant said that no move in inspection had been completed yet the landlord testified the tenant had been in attendance at the move in inspection and had signed the move in inspection report. A copy of the report has been provided in documentary evidence and shows the tenant's signature.

The landlord testified that the unit was left dirty and the landlord paid a cleaning company \$160.00 to clean the unit. This work consisted of cleaning the kitchen, the bathroom, the walls, the windowsills and tracks, outside storage area and the front door.

The landlord testified that the tenant also broke a lamp in the unit and the glass from the bulb was left on the floor. The landlord found it was cheaper to replace the lamp then to replace the

shade and bulb. The landlord seeks to recover the amount of \$35.98 which includes the cost of a bulb at 2.99. The landlord has provided photographic evidence and a copy of a internet advert showing this replacement lamp.

The landlord testified that the house was new in July, 2013. The bathtub was therefore only two years old and was left badly stained by the tenant including rust marks. The landlord attempted to remove the staining but had to engage a bath company to remove the stain and re-glaze the bath. The landlord has provided evidence showing the costs incurred of \$230.00 to clean and re-glaze the bath.

The landlord withdraws her claim for damage to her car of \$300.00.

The landlord testified that the unit had to be re-painted due to excessive odours in the unit and some wall damage. The unit had been freshly painted in July, 2013. The landlord has provided a quote for the painting for \$600.00.

The landlord testified that there was a sofa bed in the unit belonging to the landlord. At the end of the tenancy the mattress for this bed had what appeared to be urine and red wine stains. The carpets and sofa were also stained with similar substances. The landlord paid \$480.90 to have the carpets and mattress steam cleaned; however, this did not remove the staining. The landlord seeks to recover this cost and the cost of \$298.99 to replace the mattress. The landlord has provided evidence of these costs to steam clean these items and to replace the mattress.

The landlord withdrew her claim for the use of the second bedroom as this matter was dealt with at a previous hearing.

The landlord testified that the tenant was responsible for yard work under the terms of the tenancy agreement. The tenant failed to do this work and the landlord referred to her photographic evidence showing the lawn has not been mown. The landlord engaged the services of a gardener and seeks to recover the cost of \$60.00 for this work. The landlord has provided an invoice in documentary evidence.

The landlord seeks to recover the \$50.00 filing fee for this hearing and requested an Order for the landlord to keep the balance of the security and utility deposit of \$200.00 held in trust by the landlord. This amount will then be used to offset against the landlord's revised monetary claim.

The landlord withdraws her claim for a Monetary Order for money owed or compensation under the *Act*.

The landlord called her witness JB. JB is a handyman who has done maintenance at the unit. JB testified that upon entering the unit he noticed a very bad odour. The tenant had failed to clean areas of the unit for example under the couch. The mattress had stains on it which looked like urine and red wine, the bathroom was not clean; there were cigarette butts left outside, the stove was left in poor shape and the fridge and freezer needed cleaning; there were stains on the carpet and damage on the walls which was beyond normal wear and tear. The tenant had also left a plant and some trash in the unit.

The tenant declined the opportunity to cross examine this witness.

The landlord called her witness TD. TD testified that he was called in to paint the unit. TD testified that he told the landlord the unit would need to be cleaned first including behind the stove and fridge and the baseboards. TD testified that there was a strong odour in the unit which seemed to come from the carpets. TD testified that he received \$600.00 from the landlord for his work.

The tenant declined the opportunity to cross examine this witness.

The landlord called her witness WN. WN testified that he is part owner of the house. WN testified that when he entered the unit he saw that the lamp was broken and there was glass on the floor. WN testified that he took pictures of hair on the carpet. The sink and stove were very dirty and the mattress smelt very bad. The bathroom floor was very dirty and the bathroom handle was left broken. WN testified that the tenant had been smoking in the unit and WN had spoken to her about this but the tenant denied it.

The tenant asked WN when he saw glass on the floor and took pictures, how did he enter the unit. WN responded that the tenant got angry and broke the lamp and did not come to attend the move out inspection.

The landlord asked WN if they had given the tenant two opportunities to attend the move out inspection. WN responded that the tenant had been asked to attend twice and given different times but the tenant did not show up and WN did the inspection in the tenant's absence.

The tenant disputed the landlord's claims. The tenant testified that she did leave the unit clean and it was spotless when she moved out. The landlord must have made it dirty after the tenant moved out. The tenant testified that all the furniture in the unit was used furniture and the tenant denied staining the furniture. The tenant testified that the landlord put urine and red wine on the mattress and carpet.

The tenant testified that the damage to the drywall was there at the start of the tenancy as the drywall had not been completely finished when she moved in.

The tenant testified that the broken lamp had been in the tenant's unit but there was no bulb in it so the tenant put it in the shared laundry room. The tenant testified that the bath tub had been cleaned with vim and it was fine. The tenant disputed the landlord's claim for painting and testified that the walls were fine except a few spots.

The tenant agreed that she did not have the carpets cleaned when she moved out but the tenant disputed the landlord's claim for steam cleaning the carpets, the mattress and sofa. The tenant testified that family members of the landlord were using the tenant's bathroom whenever she was not there. Originally it was shared suite and all the furniture was left clean.

The tenant testified that she did take care of the yard. The tenant asked the landlord if the tenant could cut the lawn. The landlord's lawn mower broke down and the landlord bought a push mower in its place but the tenant could not manage this.

The landlord testified that JB removed the weeds, dandelions and thistles from the yard. The landlord testified that at one time the tenant lived in the house with the landlord's two daughters

and grandma. Her ex-husband WN lived upstairs. They all shared the yard maintenance. The upstairs was responsible for the front yard and the tenant and the WN were responsible for the back yard. The \$60.00 charge for yard work is for the tenant's share of yard work that had to be completed by the landlord's handyman.

### **The tenant's application**

The tenant testified that the landlord falsified her name on the move in condition inspection report. The tenant disputed attending a move in inspection and therefore the move out inspection should not have been done and that is why the tenant did not attend.

The tenant seeks to recover double the security deposit as the landlord did not return it within 15 days.

The tenant testified that the landlord did not return the tenant's fishing rod at the end of the tenancy and the tenant seeks an Order for the landlord to return this.

The tenant testified that she should be entitled to recover half the rent for August, September and October, 2014 because when the tenant moved into the unit the landlord came and took the locks of the door. The tenancy agreement states the tenant rents the entire unit for \$460.00 per month it does not state it is a shared unit. The tenant testified that at a previous hearing she was awarded \$1,840.00 for rent from December, 2013 to July, 2014 as the tenant did not get exclusive possession of the rental unit between those periods. The tenant seeks to recover half the rent back now for August, September and October because the landlord removed furniture from the second bedroom which the tenant was entitled to have as the unit had been rented furnished. There was a bed, a desk and chair in the second bedroom. The tenant seeks to recover \$1,380.00.

The landlord testified that the tenant did attend the move in report and although the tenant signed the report under the landlord's space for a signature it is the tenant's signature and this was not been falsified by the landlord. The tenant was given a copy of that inspection report with her tenancy agreement at the start of the tenancy. The tenant was given two separate times to attend the move out inspection but sent a text message to the landlord saying she would not be attending. The landlord testified that she received the tenant's forwarding address on

November 30, 2014 and received a second forwarding address by text message on December 27, 2014. The landlord testified that she filed her application and paid her filing fee on December 11, 2014.

The landlord testified that she has incurred costs to store the tenant's belongings namely a plant and fishing rod of \$20.00 a month. The landlord testified that she will drop off the tenant's fishing rod on May 15, 2015 to the address indicated on the tenant's application for dispute resolution.

The landlord testified that the second bedroom was still furnished with a bed and a shelf unit. The bedframe was not put back in and the rest of the unit had four chairs the tenant could have used for this room. The landlord testified that the tenancy agreement does not state what furniture is in the unit.

### Analysis

I have carefully considered all the pertinent evidence before me, including the sworn testimony of both parties and witnesses. With regard to the landlord's application; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be

proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I am satisfied from the evidence before me that the tenant failed to leave the rental unit in a reasonably clean condition pursuant to s. 32 of the *Act*. The landlord's photographic evidence, the information contained on the condition inspection reports and the testimony of the landlord's witnesses all corroborate the landlord's evidence that the unit was not clean. I therefore uphold the landlord's application to recover the following costs incurred:

Cleaning - **\$160.00**

Cleaning and re-glazing the bath - **\$230.00**

Cleaning the carpets, sofa and mattress - **\$480.90**

With regard to the remainder of the landlord's claim for damages, I am satisfied from the evidence before me that the tenant broke a lamp in the unit. The landlord found it was cheaper to replace the lamp than the shade and bulb and I am satisfied that this is a nominal amount. I therefore award the landlord the amount of **\$35.98**. I am also satisfied that the landlord could not remove the stains on the mattress by steam cleaning and the mattress had to be replaced. The landlord did not indicate how old the sofa bed or mattress were and consequential I must make some deduction for the depreciation of the mattress. As I do not have an age of the mattress to calculate the depreciation I will calculate it by the age of the unit of two years plus another 10 percent. I have therefore deducted 30 percent from the landlord's claim of \$298.99. The landlord will receive a monetary award of **\$209.29**.

I am satisfied with the landlord's corroborating evidence that the unit had to be repainted due to damage to the walls and the odour in the unit. However, a landlord is expected to repaint a rental unit at regular intervals. The unit was last re-painted in July, 2013 and therefore I must reduce the landlord's claim accordingly to take into account some depreciation. I have therefore deducted 20 percent from the landlord's claim of \$600.00 to an amount of **\$480.00**.

With regard to the landlord's claim for yard work; I am not satisfied that the tenant was solely responsible for yard maintenance. The landlord testified that WN was also responsible for maintaining the back yard; consequently I have no way to determine if WN carried out any maintenance himself or what the cost to the tenant would be for her share of the yard



maintenance. Without further corroborating evidence to support this I must dismiss the landlord's claim for \$60.00.

As the landlord's claim has some merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

With regard to the tenant's claim to recover double the security deposit; the landlord was awarded \$50.00 at a previous hearing and ordered to deduct this from the security deposit held in trust. This makes the amount of the security deposit, held in trust by the landlord, including the deposit for utilities, \$200.00.

I am satisfied that the tenant was in attendance at the start of the tenancy and that the signature on the move in condition inspection report is that of the tenants. I am also satisfied that the landlord gave the tenant two opportunities to attend the move out inspection and the tenant declined those offers. I refer the parties to s. 36(1) of the *Act* which states:

*The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*

*(a) the landlord complied with section 35 (2) [2 opportunities for inspection], and*

*(b) the tenant has not participated on either occasion.*

The tenant agreed that she did not attend the move out condition inspection and I must therefore find the tenant has extinguished her right to file a claim for the return of the security deposit. This section of the tenant's claim is dismissed.

With regard to the tenant's claim to recover her personal property namely a fishing rod; section 5 of the Residential Tenancy Regulations deals with abandoned property. This states, in part, that the landlord may consider property to have been abandoned if the tenant has left it at the rental unit after the tenant has vacated the rental unit and removed substantially all her belongings. Section 25 states:

**25 (1)** *The landlord must*

*(a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,*

*(b) keep a written inventory of the property,*

*(c) keep particulars of the disposition of the property for 2 years following the date of disposition, and*

*(d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.*

*(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that*

*(a) the property has a total market value of less than \$500,*

*(b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or*

*(c) the storage of the property would be unsanitary or unsafe.*

The landlord agreed that she still has the tenant's fishing rod stored and has agreed to return this to the tenant to the address provided on the tenant's application by May 15, 2015. No further orders will be made concerning this item.

With regard to the tenant's claim for compensation for the removal of furniture from the second bedroom; the tenant has the burden of proof in this matter as to what furniture was in the second bedroom at the start of the tenancy that was for the tenant's use. The tenancy agreement does not outline what furniture is available for the tenant's use. The landlord has testified that the second bedroom still had a bed and shelving unit in it and there were ample chairs available in the unit for the tenant to use one in the second bedroom. The tenant has insufficient evidence to show that her tenancy suffered as a result of the removal of any furniture which was not returned to the second bedroom. I must therefore dismiss the tenant's claim for \$1,380.00.

A Monetary Order has been issued to the landlord for the following amount:

Cleaning	\$160.00
Cleaning and re-glazing the bath	\$230.00
Cleaning the carpets, sofa and mattress	\$480.90

Replacement lamp	\$35.98
Replacement mattress	\$209.29
Painting	\$480.00
Filing fee	\$50.00
Less security deposit	(-\$200.00)
Total amount due to the landlord	\$1,446.17

### 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 **\$1,446.17**. 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.

The reminder of the landlord's application is dismissed without leave to reapply.

The tenant's application is dismissed in its entirety without leave to reapply.

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: May 01, 2015

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Residential Tenancy Branch

