



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, MND, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent and damage to the suite, an order to recover the filing fee, and an order to retain the security deposit in partial satisfaction of the claim. The tenants confirmed that they had received the landlords' documentary evidence for this hearing. I am satisfied that the landlord has acted in accordance with the service provisions of the Act and the Rules of Procedure. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background, Evidence

The landlord's testimony is as follows. The tenancy began on February 14, 2008 and ended on October 31, 2014. The tenants were obligated to pay \$1750.00 per month in rent in advance and at the outset of the tenancy the tenants paid \$875.00 security deposit. The landlord stated that the rent was due on the 16<sup>th</sup> of each month. The landlord stated that on September 24, 2014 the tenants gave him notice that they would be moving out on October 31, 2014. The landlord stated that he did not accept the notice or agree to allow the tenancy to end early. The landlord stated that the tenants were obligated to pay the rent until November 15, 2014 based on the timing of their notice. The landlord stated that the tenants paid rent for the time period of October 16-31, 2014.

The landlord stated that he is also seeking \$202.92 for unpaid utilities. The landlord stated that tenants were obligated to pay 67% of the utilities as per their tenancy agreement and that the amount remains outstanding.

The landlord is seeking \$204.48 for the cost to replace a broken fridge shelf. The landlord stated that the fridge was brand new at move in. The landlord is also seeking \$288.75 to fill sand and paint nail holes in the walls.

The tenants gave the following testimony. The tenants stated that they felt that they had a verbal agreement with the landlord that they would be able to move out of the unit on October 31, 2014 with no further rental payments required. The tenants stated that they dispute that they should have to pay for November 1-15, 2014. The tenants agree with the utilities cost as claimed.

The tenants dispute the broken fridge shelf as well as the nail hole claims. The tenants stated that the fridge shelf was not damaged. The tenants stated that they filled and sanded all the holes even though there was not a requirement for them to do that. The tenants stated that the nail holes were small and should not be classified as damage but merely wear and tear.

### Analysis

The landlord submitted documentary evidence for consideration for this hearing, the tenants did not.

Section 67 of the Act states that when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. **To prove a loss the applicant must satisfy all four of the following four elements:**

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. 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

I address the landlord's claims and my findings around each as follows.

**Landlords First Claim** – The landlord is seeking the unpaid rent from November 1 -15, 2014 in the amount of \$816.67. Both parties confirmed that rent was due on the 16<sup>th</sup> of each month. Section 45 of the Act addresses this issue as follows:

45 (1) A tenant may end a periodic 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, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the tenants own testimony on when they gave the landlord notice on September 24, 2015, the effective date of the end of tenancy would have been November 15, 2014. As the tenants are responsible for the time period up to November 15, 2014, I find that the landlord is entitled to the unpaid rent from November 1-15, 2014 in the amount of \$816.67.

**Landlords Second Claim** – The landlord is seeking \$202.92 for utility costs. The tenants do not dispute this claim and agree to the amount. Based on the agreement of the tenants and the documentation before me, I find that the landlord is entitled to \$202.92

**Landlords Third Claim** – The landlord is seeking \$204.48 for a fridge shelf. The landlord did not replace that item at this time and only offered an estimated cost. In addition, the landlord did not list this item as damaged on the condition inspection report. The landlord did not satisfy me of grounds 2 and 3 as listed above. In addition the landlord has not suffered any out of pocket costs at this time. I dismiss this portion of the landlords' application.

**Landlords Fourth Claim** – The landlord is seeking \$288.75 to repair nail holes. The landlord has not conducted any work at this time and only offers and estimated cost. It is worth noting that the tenancy was over 61/2 years and that the Residential Tenancy Policy Guideline 40 lists the useful life of paint as four years. It would be reasonable for the landlord to expect to paint the unit after a lengthy tenancy such as this one. Also, the landlord did not satisfy me of grounds 2 and 3 as listed above. Further to the above, the landlord has not suffered any out of pocket costs at this time. I dismiss this portion of the landlords' application.

The landlord is entitled to the recovery of the filing fee.

In summary, the landlord has been successful in the following claims:

Unpaid Rent for Nov 1-15, 2014	\$816.67
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Utility Bills	\$ 202.92
Filing Fee	\$50.00
Minus Security Deposit	\$(875.00)
<b>Total:</b>	<b>\$194.59</b>

Conclusion

The landlord has established a claim for \$194.59. I grant the landlord an order under section 67 for the balance due of \$194.59. This order may be filed in the Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 10, 2015

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Residential Tenancy Branch

