



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 compensation under the Act and the tenancy agreement for damage to 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 Agent for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent testified that he served the Tenants with the Notice of Hearing and Application and evidence by registered mail sent on October 30, 2014. In evidence the Landlord supplied copies of the registered mail receipts for the mail sent to each of the Tenants. The Agent testified he had conversations with the Tenants on the phone and they were aware the Landlord was making this claim. The Agent testified that the mail was returned by the post office marked "unclaimed". Under the Act, registered mail is deemed served five days after mailing. I note that refusal or neglect to accept registered mail is not a ground for review under the Act. Therefore, I find the Tenants have been duly served in accordance with the Act.

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 monetary compensation from the Tenants?

### Background and Evidence

This tenancy began December 1, 2012, with the parties entering into a written tenancy agreement. The initial rent was \$760.00 per month due on the first day of the month. The rent was increased in accordance with the Act, to \$775.00 on September 1, 2014. The Tenants paid a security deposit of \$380.00 at the start of the tenancy.

The Tenants terminated the tenancy by giving the Landlord a Notice to End Tenancy on September 27, 2014, which had an effective date of October 12, 2014.

I note that since this was a month to month tenancy that the effective date of the Notice was incorrect. Under the Act the earliest the Notice to End Tenancy could have been for was October 31, 2014, and in fact the Notice self corrects to this date under the Act in section 53.

The Landlord had done an incoming condition inspection report, but the Tenants refused to attend the rental unit for an outgoing condition inspection report. The Agent testified that the Tenants keep telling the Agent not to call them and that the Landlord could keep their security deposit.

The Tenants vacated the rental unit, however, the Landlord has incurred substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenants.

The Landlord claims for cleaning the rental unit and property in the amount of **\$310.00**, and has supplied invoices and photographs in support of this claim. The Agent testified that the Tenants had smoked inside the rental unit despite the tenancy agreement restricting smoking to outside of the building. The Agent testified that the unit required significant cleaning to get rid of the smoke smell. The floors, toilets, sinks, bathtub, and cupboards all required cleaning.

The photographs indicate the stove and the oven in particular were left very dirty. The Landlord had a separate invoice from the cleaner for the stove and oven alone in the amount of **\$90.00**, and claims that amount for cleaning.

The Landlord also submitted pictures of the carpet in the rental unit. The rug was left with a hole in it, and the Agent alleges this was caused by the pets of the Tenants. Furthermore, the carpets smelled of urine and were left very dirty and not cleaned. The Landlord claims for **\$150.00** toward the remediation of the carpets.

The Agent testified that due to the smoking in the rental unit there were nicotine stains and some splatters on the wall that would not come off despite cleaning, and therefore they had to repaint portions of the rental unit. The Landlord claims **\$100.00** for the painting.

The Landlord claims the Tenants did not return the keys for the rental unit and claims **\$20.00** for replacements.

The Tenants left behind garbage and debris at the rental unit which the Landlord had to clean up and haul to the dump. The Landlord claims for **\$172.09** for the dump fees and labour to do this cleanup and the dump fees receipts were submitted in evidence.

The Landlord further claims for the balance of rent due for October of 2014. The Tenants paid \$200.00, leaving a balance of rent due in the amount of **\$575.00**.

### 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 Tenants. 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.

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

Section 37 of the Act required the Tenants to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. I find the Tenants did not clean the unit to a reasonable standard and have breached section 37 of the Act and the requirements of the tenancy agreement, and these breaches have caused losses to the Landlord.

I further find that the Tenants failed to pay all the rent that was due for October 2014. Under section 26 of the Act the Tenants are required to pay the Landlord rent when due, unless they have some authority, such as an order from an arbitrator, not to pay the Landlord rent. Here there is no evidence the Tenants had a right to withhold rent for October 2014.

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 and his Agent acted reasonably to minimize their damages and losses.

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 **\$1,474.02** comprised of the above described amounts for cleaning and rent due, plus the **\$50.00** fee paid for this application.

I order that the Landlord retain the deposit of **\$380.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,094.02**.

The Landlord must serve the Tenants with a copy of this order. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Tenants breached the Act and tenancy agreement by failing to pay the rent that was due, and by failing to leave the rental unit reasonably clean at the end of the tenancy.

The Landlord may keep the security deposit in partial satisfaction of the claims, and has a monetary order against the Tenants for the balance due of **\$1,094.02**.

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: June 26, 2015

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Residential Tenancy Branch

