



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNR, MND, MNDC, 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 and cleaning of the rental unit, and to recover the filing fee for the Application.

Only 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 Landlord testified he served the Tenant with the Application and Notice of hearing by registered mail, sent on February 12, 2015. The Landlord testified he checked the Canada Post tracking information online and it indicated the Tenant had picked up the mail. Furthermore, under the Act registered mail is deemed received five days after mailing. Therefore, I find that the Tenant has been duly served with the Application documents and the Notice of Hearing.

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 Tenant?

### Background and Evidence

This tenancy began in January of 2014. The monthly rent was \$900.00. The Tenant was supposed to pay a security deposit of \$450.00, but failed to do so, according to the testimony of the Landlord.

The Landlord testified he did not perform incoming or outgoing condition inspection reports.

The Tenant sent the Landlord a text message in late August or early September of 2014, informing him she was ending the tenancy. The Landlord testified that the Tenant did a "midnight move" sometime in early September; however, the Tenant did not pay the Landlord any rent for September. The Landlord claims **\$900.00** in unpaid rent for September 2014.

The Landlord claims he has incurred substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenant.

The largest claim by the Landlord is in regard to two trees the Tenant allegedly cut down at the rental unit property. One tree was close to the driveway and another tree was near the outside deck of the rental unit building. The Landlord was not sure why the Tenant cut these trees down. He alleged that the tree close to the driveway may have been in the Tenant's way, or that she may have run into the tree, although he was not certain. He testified that this tree provided privacy from the nearby busy road.

The Landlord testified that the other tree was providing shade to the deck. He alleged that the Tenant may have wanted more sun on the deck of the rental unit. Again, he was not sure why this tree was cut down.

The Landlord testified that when he asked the Tenant why these trees were cut down, she did not reply.

In evidence the Landlord has provided a report from a Certified Arborist. In this report the arborist sets out that the cost to replace the trees would be \$3,374.33, which includes site preparation, delivery and the cost of the trees. The Landlord claims **\$3,374.33** for the replacement of the trees.

The Landlord also claims **\$263.25** for the cost of the consultation and report by the Certified Arborist. In addition to the report of the arborist, the Landlord has provided photographs of the tree stumps and area.

The Landlord also provided evidence on the general condition of the outside property of the rental unit as left by the Tenant, in the form of photographs.

The Landlord claims the Tenant left garbage and items on the grounds of the property. The photographs depict a clothes dryer, broken lamps, curtain rods, assorted metal parts, several garbage bags, a car tire, an animal carrier, used lumber, partially burnt logs and lumber in a fire pit, and other pieces of unidentified metal. The Landlord claims **\$200.00** for the cleanup of these items and has provided an invoice from a worker for this amount. The Landlord has also provided two receipts for dumping fees at the local landfill site, in the amount of **\$18.75**, which he also claims for.

The Landlord also claims for **\$450.00** for cleanup and repairs of the interior of the rental unit. The Landlord has supplied photographs of the interior which indicate a damaged window sill, damage to the fire hearth, a damaged door knob, a damaged floor in the laundry room, and a damaged shelf in the bathroom. The photographs also show items left in the freezer and refrigerator, and on shelves in the rental unit.

At the end of the hearing the Landlord testified that he had sold the rental unit and was no longer renting. He testified that the property was sold after he had made these claims. He testified that he was not going to be returning to the property to replant the trees, but wanted the Tenant to pay for these losses.

### 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.

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

I find the Tenant breached section 26 of the when she failed to pay the rent for September of 2014, and I allow the Landlord **\$900.00** for this claim.

I find the Tenant did not clean items out of the rental unit or on the property at the end of the tenancy. I base this on the fact that it is unlikely the Tenant would have rented the unit if these items were left behind in the rental unit, such as the food in the fridge for example. I also find it is unlikely the Tenant would have accepted the rental unit with the garbage bags and other items strewn around the property. This leads me to find the Tenant breached section 37 of the Act, by failing to clean up the rental unit and the yard, prior to vacating the rental unit. I allow the Landlord the **\$218.75** in cleanup and dump fees.

I also allow the Landlord **\$100.00** towards the cleanup of the rental unit interior, and dismiss the other \$350.00 portion of this claim for damages.

I find that by failing to perform an incoming condition inspection report the Landlord had insufficient evidence of the condition of the interior of the rental unit at the start of the tenancy. For example, the damaged window sill and floor in the laundry room may have been damaged at the start of the tenancy and the Tenant accepted these. I find the Landlord had insufficient evidence to show the Tenant had damaged the specific items claimed for and I dismiss these without leave to reapply. However, I do find that the Tenant failed to clean the rental unit to a reasonable standard, as required under section 37 of the Act, therefore, I award the Landlord the \$100.00 toward the cleanup of the interior of the rental unit.

In regard to the trees, *if* the Tenant did cut these trees down that would be a breach of the Act. However, I find that the Landlord has not adequately proven his losses here, in

particular due to the fact he sold the property and does not intend on replanting the trees.

In civil claims monetary compensation is awarded to return the harmed person to the position they were in prior to the harm occurring. It is not appropriate to put the harmed person in a better financial position due to the harm. This is because an arbitrator does not have the authority to *punish* a party by awarding punitive damages, as explained in Policy Guideline 16. This appears to have been what the Landlord wanted here: punishment of the Tenant for allegedly cutting down the trees.

Furthermore, an arbitrator may only award monetary compensation as permitted by the Act or under the common law, such as an award for out of pocket expenses if proved at a hearing or for the value of a general loss where it is not possible to place an actual value on the loss.

In this instance, the Landlord has sold the property and does not intend on re-planting the trees. There was no evidence from the Landlord that the loss of the trees affected the sale value of the property, such as a letter from the purchasers saying they would have paid an additional amount for the property if the trees had been there. It could have been just as likely that the purchasers liked the property more because these two trees were gone, as they did not block the sun, or did not impede the driveway. Of course this is mere speculation as there is no evidence either way provided by the Landlord.

The difficulty this points to is that there is insufficient evidence to prove what loss the Landlord actually suffered due to the loss of the trees. Therefore, I find that the Landlord had insufficient evidence to show that he had actually suffered a loss due to the alleged cutting down of the trees by the Tenant.

As to the report of the arborist, this estimate shows the amount it might have cost the Landlord had he actually replaced the trees; however, the Landlord testified he does not intend on replanting the trees, as he no longer owns the property. Therefore, the Landlord has not proven he suffered any out of pocket expenses nor will he incur these, since the property has been sold.

For these reasons, I dismiss the claims of the Landlord for the trees, without leave to reapply.

Therefore, I find that the Landlord has established a total monetary claim of **\$1,268.75** comprised of the above awarded amounts and \$50.00 toward the filing fee paid for this

application. As the Landlord has been only partially successful here, I award him only a portion of the \$100.00 filing fee for the Application.

This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Tenant breached the Act by failing to pay rent when due, and by failing to return the rental unit and property to the Landlord in a reasonably clean state. The Landlord is granted a monetary order for \$1,268.75 against the Tenant.

The Landlord has failed to prove the Tenant damaged the rental unit. The Landlord has also failed to prove losses due to the alleged cutting down of trees. These claims are dismissed without leave to reapply.

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: August 19, 2015.

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Residential Tenancy Branch

