



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW DECISION**

Dispute Codes: MNR MND MNDC MNSD FF

### **Introduction:**

On October 8, 2014, the landlord applied to the Residential Tenancy Branch to claim damages against the tenant and a hearing was held on May 14, 2015; the tenant attended the hearing but the landlord did not. The tenant was given a monetary order for double the damage deposit as he had testified that he provided his forwarding address to the landlord by putting it in the mailbox with the keys on July 2, 2014.

The landlord applied for a Review Consideration of the Decision and Order dated May 15, 2015 and was granted a Review Hearing as the arbitrator found on June 10, 2015 that the landlord's review application supported the proposition that false evidence on a material matter may have been provided to the arbitrator and that evidence was a significant factor in the making of the decision/issuance of the monetary order. The Decision and Monetary Order dated May 15, 2015 granted to the tenant were suspended pending a Review Hearing. The Review Hearing was held today and both parties were present.

This Review hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 37, 46 and 67 for rental loss and damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

### **SERVICE**

Both parties attended and the tenant confirmed he received the Application for Dispute Resolution, evidence and Notice of the Hearing by registered mail. I find that the tenant is served with the Application according to section 89 of the Act.

### **Issue(s) to be Decided:**

Has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Did he suffer rental loss as a result? Is the landlord entitled to recover the filing fee?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced on March 1, 2011, that monthly rent was \$1300 and a security deposit of \$650 was paid in March 2011. It is undisputed that the

tenant vacated on July 2, 2014 and left the keys in the mailbox. However, the tenant states he left his forwarding address with the keys and the landlord said he never received it. The landlord provided emails and letters in evidence and in one email dated September 5, 2014, the landlord sets out a list of damages and requests the tenant's forwarding address so he could send the condition inspection report. In the hearing today, the tenant said he never read to the end of the email for he was upset at the claims the landlord was making but he maintains that he left the forwarding address in the mailbox with the keys on July 2, 2014.

The rented premise was a home with the landlord and his son as owners. It is undisputed that this landlord bought his son's share and took over the home in the spring of 2014. The tenant argued that this was not his landlord as he signed the lease with the son. The landlord said the tenant refused to sign a new lease with him saying it was not necessary and the tenant confirmed this. A fixed term lease dated February 18, 2011 is in evidence signed by the tenant and the landlord and his son as landlords.

The landlord supplied in evidence move-in and move-out condition inspection reports, photographs of the home when renovated and the damage at the end of the tenancy and invoices. The landlord claims as follows:

1. \$424.65 for upstairs bedroom carpets+\$185.25 to install +\$50 to deliver. He said he had not replaced them yet as the subsequent tenant was content to live with them as she had a dog.
2. \$291.17 + \$200 for replacement of kitchen counters with a gouge and chip marks in them. The tenant agreed his daughter had inadvertently gouged the counter. They have not been replaced yet.
3. \$823.75 for cleaning; invoice provided
4. \$1239.00 to repair damaged interior and this work was done. The tenant noted and the landlord agreed that there had been some leaks in the roof and bathroom.
5. \$182.00 to paint bedroom walls and ceiling
6. \$147.00 to remove garbage. The tenant said that most of the garbage was not his but had been left from the renovation and the neighbour moved it out from behind a shed but he did agree that he left a freezer behind. The landlord said there was also garbage inside the home.
7. \$500 replacement cost for a stove of an unknown age. The tenant said it was second hand and the model dated from the early 2000s in his opinion.
8. \$100 to replace venetian blinds

The tenant objected that he had not received items 7 & 8 in evidence. The landlord faxed a copy to the Residential Tenancy Branch on June 26, 2015 but he said the tenant had one in the bound booklet he sent to him. The tenant was unable to find it.

The tenant provided no documents to dispute the claim. The landlord supplied invoices for all items claimed, many photographs and emails between the parties. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

### **Analysis**

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.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. Section 37 of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. I find in this case the weight of the evidence is that tenant did not meet his obligations under the *Act* as the move-out report and photographs provided by the landlord show that a lot of cleaning and garbage removal was required whereas the move-in report shows a clean and garbage free property. I find the landlord entitled to recover \$823.75 for cleaning and \$147 for garbage removal as these were the invoiced costs to cure the damage. Although the tenant contended that the garbage was not all his, I find he agreed he left a freezer and I note when the landlord sent him an email regarding garbage removal in early July, he did not say it was not his garbage but said only "use the dd" (damage deposit). I find the weight of the evidence supports the landlord's claim for garbage removal.

I find the evidence supports the landlord's claim for carpet replacement. I find the cleaning company were unable to clean some of the stains on the carpets. While the tenant contended the landlord had not replaced the carpets yet, I find the evidence is that the landlord sustained damage to the carpets due to the actions of the tenant's family and the cost of this loss is well documented with estimates to replace them. I find the carpets were new at the beginning of the tenancy and were 31/3 years old at the end. As explained to the parties in the hearing, the Residential Tenancy Policy Guideline 40 provides for a useful life of elements in rented premises which is designed to account for reasonable wear and tear. I find carpets are assigned a useful life of 10 years and these carpets had 66.6% of their useful life remaining. I find the landlord entitled to recover \$439.49 or 66.6% of the total cost (\$659.90) of replacing the carpets.

I find the weight of the evidence is there was damage to the counter tops which was caused by the tenant or his family and to replace them would cost \$491.17. Counters are assigned a useful life of 25 years in the Guidelines and they were 31/3 years old. I find the landlord entitled to recover \$425.74 (87%) for the 21.67 years of useful life remaining. In respect to the damage to the interior, I find building elements such as drywall, doors and cabinets have a useful life of

20 years. I find there was evidence of significant work needed to patch, replace and repair such items for a cost of \$1239. I find the landlord entitled to recover \$1032.70 for the 16.67 years or 83% of useful life remaining. In respect to the painting claim for \$182, I find paint is assigned a useful life of 4 years so I find the landlord entitled to recover \$30.33 for the 16% of useful life remaining in the paint. The tenant said the paint job was poor and there had been water damage but I note the landlord only claimed one third of the total invoice for painting in recognition of the other problems.

I find the amount of significant amount of required repair and clean up caused the landlord to lose one month of rental income. I find the weight of the evidence is that this loss of \$1300 is attributable to the tenant leaving the home in a very dirty, unrentable condition so I find the landlord entitled to recover one month of rental loss or \$1300.

Although the landlord said he submitted the extra page with the quotes for a stove and blinds to the tenant, I find it more likely that this page was not provided to the tenant as a similar bound booklet was provided as evidence to the Residential Tenancy Branch and this page was not included. I dismiss this portion of his claim as I find insufficient evidence that the tenant had notice of this.

The tenant submitted that he had not made an Application for double his security deposit in the original hearing but when the landlord failed to attend the scheduled hearing, the arbitrator awarded this to him pursuant to section 38 of the Act. I find this was based on his testimony that he provided his forwarding address in writing to the landlord in the mailbox with the keys on July 2, 2014 and the landlord did not file an Application to claim damages until October 2014.

However, I find the weight of the evidence is that the landlord never received his forwarding address in writing and section 38(1) (b) provides that the landlord must file an Application within 15 days after the landlord **receives** the tenant's forwarding address in writing. I find the landlord's evidence of non receipt of the address is well supported by his request for a forwarding address by email to the tenant in September 2014 (which part the tenant said he did not read) and his queries to relatives documented in emails in evidence to try to find out the tenant's new address. I find the weight of the evidence does not support the granting of twice the security deposit to the tenant pursuant to section 38. His security deposit will be applied to the debt outstanding to the landlord as calculated below. The original decision and order dated May 15, 2015 which were suspended in the Review Consideration Decision are now set aside and cancelled.

Although the tenant contended that this landlord was not his landlord, I find the landlord was one of the parties in the original tenancy agreement and both parties agreed the tenant refused to sign a new lease. I find the Act in section 1 defines a tenancy as an agreement, whether written or oral, express or implied between a landlord and tenant. I find the weight of the evidence is that this landlord had a tenancy agreement with the tenant with all its rights and

obligations as they were all parties to the original agreement and the tenancy continued when this landlord became the sole owner of the property.

**Conclusion:**

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

**Calculation of Monetary Award:**

Cleaning cost	823.75
Garbage removal	147.00
Carpet allowance	439.49
Counter replacement allowance	425.74
Repairs to home allowance	1032.70
Painting allowance	30.33
One month rental loss	1300.00
Filing fee	100.00
Less security deposit (no interest 2011-15)	-650.00
Total Monetary Order to Landlord	3649.01

**I HEREBY ORDER THAT THE ORIGINAL DECISION AND ORDER DATED MAY 15, 2015 ARE SET ASIDE AND CANCELLED.**

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: August 06, 2015

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Residential Tenancy Branch

