



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RNG DEVELOPMENT INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act, (the “Act”), for a monetary order for unpaid rent or utilities, for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants.

On June 22, 2015, both parties appeared. On July 6, 2015, an interim decision was rendered which should be read in conjunction with this decision and the matter was reconvened for a limited purpose as additional information was requested in my interim decision.

On July 6, 2015, both parties appeared and both parties provided the requested information as specified in my interim decision.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent or utilities?  
Is the landlord entitled to a monetary order for money owed under the Act?  
Is the landlord entitled to a monetary order for damages to the rental unit?  
Is the landlord entitled to keep all or part of the security deposit?  
Is the landlord entitled to recover the cost of the filing fee from the tenants?

### Background and Evidence

The tenancy began on January 1, 2013. Rent in the amount of \$1,600.00 was payable on the first of each month. A security deposit and pet damage deposit of \$1,600.00 (the “Deposits”) was paid by the tenants.

The landlord claims as follows:

a.	Unpaid rent and late fees	\$ 760.00
b.	Unpaid utilities	\$ 349.95
c.	Repairs and cleaning	\$ 571.98
d.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$1,731.98</b>

#### Unpaid rent and late fees

The landlord's agent testified that the tenants failed to pay all rent owed and all late fees that were due under the term of their tenancy agreement. The landlord's agent stated clause 1 of the rental agreement allows them to collect a late fee of \$20.00 per day. Filed in evidence is a copy of the tenancy agreement.

The landlord's agent testified that the total rent owed up to August 2014 was \$3,110.00 and late fees of \$2,680.00 which included 2 NSF fees of \$40.00.

The tenants testified that balance calculated by the landlord is not correct. The tenants stated that the landlord has added the amount of \$800 for August 2014, rent which should be deducted as no rent was payable for August because the tenancy ended based on a 2 Month Notice to End Tenancy for Landlord's Use of Property and that \$800.00 was their compensation.

The tenants testified that further the landlord had been given the amount of \$800.00 on August 1, 2014, to pay towards outstanding rent arrears, and the landlord was also given permission to retain the Deposits of \$1,600.00.

The tenants indicated that all rent has been paid and there was an overpayment of \$100.00, which was applied to late fees. The tenants provided the calculation as follows: \$3,100.00 - \$800.00 [Aug rent] - \$800.00 [paid August 1] - \$1,600.00 [Deposits] = (\$100.00)

The tenants testified that on September 17, 2014, they paid the landlord the amount of \$1,600.00 towards the late payment fees, which fully satisfied their agreement. The tenants indicated the total amount paid in late fees was \$100.00 + \$1,600.00=\$1,700.00.

#### Unpaid utilities

The landlord's agent testified that at the end of the tenancy the tenants failed to pay the final utility bill in the amount of \$349.95. The agent indicated that since they have filed their claim the tenants paid the amount of \$315.43, leaving a balance owed for utilities in the amount of \$34.52.

The tenants testified that when they paid their account at the city office, the city clerk told them that they would still receive the discounted rate, even though it was paid late. The tenants stated the landlord has provided no evidence that the city office is asking for the amount of

\$34.52. Filed in evidence is a copy of the utility bill which the imprint shows it was paid at the city office.

#### Repairs and cleaning

The landlord's agent testified that the tenants' cat caused damage to the door seal. The landlord seeks to recover the amount of \$40.00.

The tenants agreed that they are responsible for the damaged to the door seal. The tenants stated that the landlord has been compensated as they sent a cheque in the amount of \$40.00 to cover that expense. Filed in evidence is a copy of the cheque.

The landlord's agent testified that they had to repair and repaint the walls where picture were hung as they left pin holes. The landlord seeks to recover two hours of labour in the total amount of \$80.00.

The tenants testified that the holes were normal wear and tear. The tenants stated they filled the small holes prior to the tenancy ending. The tenants stated when they asked the landlord for touchup paint for the walls, the landlord provided them with the wrong paint.

The landlord's agent testified that the tenant failed to clean the range hood as it was covered with grease and dust. The agent stated that it took 30 minutes to clean. The landlord seeks to recover the amount of \$20.00.

The tenants deny they left the range hood dirty. The tenants testified that they left the rental property spotless. Filed in evidence are photographs of the rental unit.

The landlord's agent testified that the tenants scratched the wood floors, which took them 30 minutes to repair. The landlord seeks to recover the amount of \$20.00.

The tenants deny causing any damage to the floors which would be above normal wear and tear.

The landlord's agent testified that to make all the repairs noted above, they had to buy materials. The landlord seeks to recover the amount of \$174.35.

The tenants testified that they do not agree that the landlord incurred any costs. The tenants stated that the landlord has not provided any receipts for materials purchased.

The landlord's agent testified that they brought in a shed for the tenants to use during their tenancy. The agent stated that after the tenancy ended they decided to remove the shed. The agent stated that it took 3 hours to remove the shed. The landlord seeks to recover the amount of \$120.00.

The landlord's agent testified that they left a computer desk in the rental unit at the start of the tenancy. The agent stated that there was no agreement for the tenants to rent the desk under a separate agreement; however, they feel some compensation would be fair. The landlord seeks to recover the amount of \$50.00.

The landlord's agent testified that the tenants placed a stop payment on their August 2014, rent cheque, which resulted in a service charge. The landlord seek to recover the amount of \$7.50.

The tenants testified that the landlord was informed that they had place a stop payment on the cheque as no further rent was due.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### Rent and late fees

I accept the evidence of the landlord that the rent ledger shows the tenants were in rent arrears of \$3,110.00, as of August 2014; However, I accept the tenants' calculation that all rent has been paid as the landlord did not deny the tenants detail calculation as stated in the evidence and background.

Further, I have reviewed the tenants detail calculation of money paid or credited and accept the accuracy of the amounts; however, I find the base amount of \$3,110.00 should be use when applying the payments and credits.

Therefore, I have determined the following calculation:  $\$3,110.00 - \$800.00 - \$800.00 - \$1,600.00 = (\$90.00)$ , I find there was an overpayment of rent in the amount of \$90.00. As no rent is owed, I dismiss the landlord claim for unpaid rent.

In this case, the landlord's agent indicated that the tenants have accumulated late fees and NSF fees totalled the amount of \$2,680.00 during their tenancy, as the tenancy agreement allows them to collection a daily late fee of \$20.00.

I accept the landlord's agent evidence that clause 1 of the tenancy agreement shows the landlord is entitled to collect a daily late fee of \$20.00.

However, I find that clause is not in compliance with section 7(1) (d) of the Residential Tenancy Branch Regulation which states, a landlord may charge a non-refundable fees if the term if specified in the tenancy agreement for an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or **for late payment of rent.**

Section 5 (2) of the Act states any attempt to avoid or contract out of this Act or the regulations is of no effect.

Therefore, I find the late fees clause listed in clause 1 of the tenancy agreement has no force or effect.

Further, I have review the tenancy agreement and it does not specified any administration fee for the return of a tenant's rent cheque as required by the regulations.

I find the landlord was not entitled to collect an administrative fee for return of tenant's cheque by a financial institution.

I find the landlord has breached the Act, by collection late fees and administrative fee for return of tenant's cheques that they were not entitled to collect. Therefore, I dismiss the landlord claim to recover late fees and Nsf fees.

In this case the evidence supports there was an overpayment of rent that was applied to the overdue fees in the amount of \$90.00. On September 17, 2014, the tenants paid a further amount of \$1,600.00 towards overdue fees. I find the total payments made by the tenants to the landlord for late fees and NSF fees are in the amount of \$1,690.00.

Therefore, I find the tenants are entitled to recover the late fees, and NSF fees that they have paid to the landlord, as the landlord was not entitled to contract outside the Act.

Therefore I find the tenants are entitled under Section 65(1)(c)(iii), to recover the payments made to the landlord in the amount of **\$1,690.00.**

Unpaid utilities

In this case both parties have provided a different version of events. The landlord indicates the tenants owe the amount of \$34.52, for the final utility bill. The tenants deny they owe any utilities as the city clerk gave them the discounted rate when they paid their final bill.

In this case, I accept the evidence of the tenants over the landlord. The tenants have provided a copy of the invoice in the amount of \$349.95. The invoice shows that the amount would be discounted by \$34.52, if paid by October 7, 2014. On October 31, 2014, the tenants paid the discount amount of \$315.43, at the city office, as the bill is imprinted by the city, which makes the tenants testimony reasonable.

Further, the landlord has provided no evidence such as letter from the city or an updated bill showing the amount of \$34.52 is still owed. I find the landlord has failed to prove a violation of the Act, by the tenants. Therefore, I dismiss the landlord's claim for unpaid utilities.

### Repairs and cleaning

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

#### **Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

The tenants agreed their cat caused damage to the door seal: however, the landlord has been compensated when they receive the tenants' cheque for \$40.00 to cover this expense. Therefore, I find the landlord is not entitled to any further compensation.

In this case, I find the landlord has failed to prove that the tenants caused damage to the walls as it is reasonable that tenants will put up pictures in the rental unit during the tenancy.

Under the Residential Tenancy Branch Policy Guideline #1 the tenants are not responsible for filling the holes or the cost of filling the holes, except where excessive nail holes are made. There was no evidence of excessive nail holes.

Further, even though the tenants filled the holes, and painted those holes with the wrong paint. That was not the fault of the tenants, as the landlord provided the paint. I find the landlord has failed to prove a violation of the Act, by the tenants. Therefore, I dismiss this portion of their claim.

The landlord is seeking compensation for cleaning the range hood. Under the Act the tenants are responsible for leaving the rental unit reasonable clean. The photographs submitted by the tenants' show that the tenants have met or exceeded that requirement, as the unit looks exceptionally clean in the photographs. I find the landlord has failed to prove that the tenants did not leave the unit reasonable clean. Therefore, I dismiss this portion of the landlord's claim.

In this case, the landlord has provided no evidence that the tenants caused damage to the floors, which was above normal wear and tear, such a photographs. Therefore, I dismiss this portion of the landlord's claim.

The landlord seeks compensation for material purchased. However, as I have found that the landlord has failed to prove a violation of the Act, by the tenants for damages to the walls, floors or cleaning. The landlord is not entitled to compensation. Further, the landlord did not provided any evidence of any of the items said to be purchased. Therefore, I dismiss this portion of the landlord's claim.

The landlord seeks compensation for removing the shed that is owned by the landlord. I find that is unreasonable as the shed is not the tenants' personal property nor their responsibility. I find it was the landlord's personal choice to remove the shed at the end of the tenancy. I find the landlord has failed to prove a violation of the Act by the tenants. Therefore, I dismiss this portion of the landlord's claim.

The landlord seeks compensation for a desk that was left in the rental unit during the tenancy. I find that is unreasonable as there was no discussion with the tenants to pay any additional amount to use the desk. I find the landlord has failed to prove a violation of the Act by the tenants. Therefore, I dismiss this portion of the landlord's claim.

The landlord seeks compensation to recover a stop payment fee. However, this fee could have been avoided if the landlord did not attempt to cash the cheque after they were notified by the tenants that they had placed a stop payment on it. I find the landlord has failed to prove a violation of the Act by the tenants. Therefore, I dismiss this portion of the landlord's claim.

As the landlord was unsuccessful with their claim they are not entitled to recover the filing fee from the tenants.

As I have found the landlord breached the Act, when they attempted to contract outside the Act, by collecting a late fee that does not comply with the legislation. I find it appropriate to issue the tenants a monetary order pursuant to section 62, 65 and 67 of the Act, in the amount of **\$1,690.00.**

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

Conclusion

The landlord's application is dismissed.

The tenants are granted a monetary order as stated in the above amount.

Dated: September 17, 2015

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Residential Tenancy Branch



