



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, MND, FF

This hearing reconvened as a result of cross applications in which the parties each sought monetary orders against the other. The hearing was originally set for July 2 2015 and was continued on September 28, 2015 where it completed, comprising nearly three full hours of hearing time.

Both parties appeared at the hearing. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. The parties agreed that all evidence that each party provided had been exchanged. No further issues, with respect to service or delivery of documents or evidence were raised.

The relationship between these two parties is an acrimonious one. Both parties made allegations of the other lying, deceit and fraud. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, as this matter was conducted over two separate dates and 3 hours of hearing time, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

Is either party entitled to a monetary order as claimed?

### Background and Evidence

The tenants' testimony is as follows.

The tenancy began on July 1, 2014 and ended on December 31, 2014. The tenants were obligated to pay \$2650.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1325.00 security deposit and a \$1325.00 pet deposit.

The tenants stated that on November 3, 2014 the basement of the home and living room became flooded with water due to heavy rains. The tenants stated the water was “backing up” through an eight inch hole in the laundry room floor. The tenants stated they think this was the drain but looked unusually large. The tenants stated they contacted the landlord immediately to address the issue. The tenants stated that while he awaited the landlord, he used his own pump to remove as much standing water as he could.

The tenant stated that there was so much standing water that his pump “burned out and died”. The tenant stated that he did as much as he good to mitigate the damage for the landlord. The tenant stated that the landlord attended the following day with the insurance company to investigate the problem.

The tenant stated that he was without 1263 square feet of the 3200 square foot home for 59 days and seeks compensation. The tenant stated that based on his calculations he lost the use of 40 % of the rental unit. The tenant provided a pro-rated calculation for the days he was without the square footage and seeks \$2399.13 as compensation for loss of use. The tenants stated that they are also seeking \$268.80 for labour costs incurred to move items out of the basement, \$441.28 for two pumps, \$24.59 for moving supplies, \$2000.00 for the loss of quiet enjoyment for the disruption of ongoing repairs to deal with the flood from the insurance company during from November 4, 2014 – December 31, 2014, \$200.00 for the loss of quiet enjoyment of not having the toilet repaired as ordered in a previous hearing and the return of double the security and pet deposit. The tenant stated that he felt he was justified in seeking the amounts as claimed, as this has been an ongoing issue; even prior to moving in.

In response to the landlords’ claims, the tenant stated that he did not restrict access to the unit to have repairs conducted, left the unit cleaner than when he got it, did not damage the vinyl siding on the outside of the home as alleged and had nothing to do with the neighbor removing the landlords plants. The tenant stated that he did withhold rent to cover the costs of the pumps and the labour involved to pump the water out of the basement and the labour to move all the furniture and personal items from getting damaged.

The tenants are applying for the following:

1.	Loss of Use of Basement Dining Room November	\$1113.88
2.	Loss of Use of Basement Dining Room December	\$1285.25
3.	Wages for Labour to evacuate basement	\$268.80
4.	Home Depot Pumps (2)	\$441.28

5.	Moving Supplies	\$24.59
6.	Loss of Quiet Enjoyment Nov & Dec Repairs	\$2000.00
7.	Loss of Quiet Enjoyment Toilet not repaired	\$200.00
8.	Return of Double the Security Deposit	\$2650.00
9.	Return of Double the Pet Deposit	\$2650.00
	<b>TOTAL</b>	<b>\$10, 633.80</b>

The landlords' testimony is as follows.

The landlord disagreed with the square footage calculation as claimed by the tenant. The landlord stated that the amount of square footage affected by the flood was 601 square feet. The landlord stated that based on his calculations the tenant was without the use of 27% of the rental unit. The landlord also disputed the amount of days the tenant was without access to that area. The landlord stated that the tenant didn't have use to the area for a total of 18 days. The landlord stated that based on his calculations of the home and the affected area and the very limited days that the area was unusable, the tenant would be entitled to \$789.02.

The landlord stated that the tenants claims to the pumps is not justified as he did not ask the tenant to pump out his basement nor did he ask him to go buy replacement pumps to have on hand. The landlord stated that the tenants moving costs were costs that he would have to bear when the term came up at the end of December 2014 so he doesn't feel the tenant should be awarded that. The landlord stated that the tenants claim for loss of use to the toilet makes no sense as he had the toilet repaired. The landlord is seeking \$420.00 to replace the toilet as the tenant damaged the lid.

The landlord stated that the tenant left the unit dirty at the end of the tenancy. The landlord stated that the tenant caused damaged to the vinyl siding of the house by barbequing causing soft spots in the siding, and that the tenant told the neighbor that they could remove the landlords shrubbery on the east side fence, without the landlords authority.

The landlord stated that he had a claims adjuster attend to the property the following morning to address the situation as soon as possible. The landlord stated that he was at the mercy of the insurance companies' process and would like to have repaired

everything the following day but that's not reality. The landlord stated that the tenant was not cooperative in allowing the insurance company to remediate the basement and that the tenant restricted access.

The landlord is applying for the following:

1.	Unpaid December 2014 rent	\$735.38
2.	Toilet Replacement	\$420.00
3.	Cleaning	\$250.00
4.	Delay Costs	\$250.00
5.	Outdoor siding	\$1260.00
6.	Plants and shrubbery	\$1050.00
	<b>TOTAL</b>	<b>\$3965.78</b>

### Analysis

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: in this case, both parties must each prove their own claims.**

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
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

### **Tenants Claims**

I address the tenants' claims and my findings as follows.

1. Loss of Use November and December (59 Days) – \$2399.13.

The tenant provided a calculation as to the loss to a portion of his suite. The tenant stated that he lost access to 40% of the home for 59 days. The tenant stated that the water ingress problem was an ongoing problem and that the landlord is to blame.

The landlord stated that they did have a water ingress problem in January 2014 but that problem had been rectified. The landlord stated that numerous heavy rains occurred subsequent to the January flood without incident. The landlord stated that he felt that the serviceman had addressed the problem at that time. The landlord stated that the insurance company attended the following day to conduct emergency work. The landlord stated that he agrees the tenant is entitled to some money for loss of use and that he made attempts to compensate him for which he was rebuffed. The landlord stated that he feels that the tenant is entitled to \$789.02.

After reviewing the documentation before me and considering the testimony of both parties, I find that the calculations submitted by the landlord is the appropriate and correct amount and find that the tenant is entitled to \$789.02.

2. Wages to evacuate the basement \$268.80.

The tenant stated that he was unable to remove all the items from the basement so he had to get help. The tenant provided a receipt to support his claim.

The landlord disputes this claim. The landlord stated that “the tenant packed up his own belongings to protect them, as he should”. In addition, the landlord stated that he felt the amount was excessive considering the small amount of items that the tenant moved.

As outlined above, the party making a claim must satisfy all four parts of the test to be successful. Although the tenant has provided proof that he had the items moved, he has not provided sufficient evidence that the landlord had been negligent or reckless and breached the Act. The tenant has not met the burden required and I therefore dismiss this portion of their claim.

3. Pumps - \$441.28

The tenant stated that he used his own pump to remove the water from the basement. The tenant stated that the amount of water was so extreme that it burned out his pump. The tenant stated that he purchased a new one to replace the one that was damaged and an extra one for the landlord to have on “standby”. The tenant provided receipts to

support this claim. The tenant stated that he has one pump in his possession at this time.

The landlord disputes this claim. The landlord stated that the tenant made inquiries at the hardware store to find that the tenant returned one of the pumps. The landlord stated that he did not ask the tenant to use his pump to remove water nor did he ask him to buy one to have on "standby". The landlord stated that the tenant has possession of the pump and should not have to pay for something the tenant kept.

As stated earlier, the applicant must provide evidence that meets the four part test as outlined above. The applicant has not provided sufficient evidence to show that the landlord was negligent or reckless that caused a violation of the Act, regulation or tenancy agreement, accordingly; I dismiss this portion of the tenants' application.

#### 4. Moving Supplies - \$24.59.

The tenant stated that he purchased some moving supplies to move his items out of the way after the flood occurred. The tenant provided a receipt to support his claim.

The landlord disputes this claim. The landlord stated that the tenant "used those same supplies to move out which he was going to do anyways". In addition, the landlord stated that the tenant did not have to purchase those supplies just to move some items from one spot in the house to another as the home is large with ample space.

The applicant has not provided sufficient evidence to show that the landlord was negligent or reckless that caused a violation of the Act, regulation or tenancy agreement, accordingly; I dismiss this portion of the tenants' application.

#### 5. Loss of Quiet Enjoyment - \$2000.00 Nov & Dec Repairs

The tenant stated that the landlord had tradesman come and go on a regular basis that caused him to lose the privacy of his home and the benefits of the home. The tenant stated that he felt the amount sought was more than fair due to all of the interruptions his family endured.

The landlord disputes this claim. The landlord stated that he was trying to the best of his ability to rectify the situation as soon as he possibly could with the least amount of inconvenience to the tenant. The landlord stated that he was at the mercy of the due process of the insurance company. The landlord stated that he was doing his best to mitigate the intrusions but submits that the tenant was less than accommodating which

in turn, extended the process. The landlord stated that many of the delays were in fact due to the tenant.

Once again, as stated earlier, the applicant must provide evidence that meets the four part test as outlined above. The applicant has not provided sufficient evidence to show that the landlord was negligent or reckless that caused a violation of the Act, regulation or tenancy agreement, accordingly; I dismiss this portion of the tenants' application.

6. Loss of Quiet Enjoyment – Toilet Not Repaired - \$200.00

The tenant stated that the landlord was ordered to repair one of the toilets in the home in October 2014. The tenant stated that the landlord failed to do that for the remainder of the tenancy and that they should be entitled to compensation.

The landlord disputes this claim. The landlord stated that after he received the decision in another hearing, he had the toilet repaired. The landlord stated that the flushing mechanism was the only item that wasn't working properly and that it was replaced. The landlord stated that he was present when the toilet was repaired on October 20, 2014 and noticed that the toilet lid had damage that was not present when the tenants began their tenancy.

Based on the disputing documentation from the landlord that shows the toilet was repaired, and the lack of evidence from the tenant for this claim, I dismiss this portion of the tenants' application.

7. Return of Double the Security and Pet Deposit - \$5300.00

Both parties applied to retain the security and pet deposit. The landlord stated that as his claim exceeded the deposits he made his application seeking to retain both of them. The tenant stated that the landlord had no right to retain the deposits as the flood was his fault and since he has been delayed 9 months from receiving them he requests the return of double both his security and pet deposit. The tenancy ended on December 31, 2014 at which time the tenant provided his forwarding address. The landlord filed for dispute resolution on January 12, 2015.

Section 38 of the Act addresses this issue before me as follows:

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

**the landlord must do one of the following:**

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The landlord has complied with the Act and filed within the legislated timeline, therefore, the doubling provision is not available to the tenant. The distribution of the deposits will be addressed at the end of this decision.

**Landlords Claims**

I address the landlords' claims and my findings as follows.

1. Unpaid December Rent \$735.38

The landlord stated that the tenant withheld a portion of the December rent without his agreement.

The tenant stated that he withheld the rent to cover some emergency costs to purchase the pumps and the moving costs he incurred due to the flood. The tenant acknowledged that he did not have the consent of the landlord or an order from the Branch to withhold rent.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As the tenant did not have an order from the Branch or the consent of the landlord to withhold rent, I find that the landlord is entitled to \$735.28.



2. Toilet Replacement - \$420.00.

The landlord stated that the toilet lid was damaged and had a large piece missing from it. The landlord stated that the condition inspection report shows that there wasn't damage to the toilet at the beginning of the tenancy. The landlord submitted a receipt and photo to support his claim.

The tenant disputes this claim. The tenant stated that the toilet lid was always broken and that the landlord is making a fraudulent claim.

I accept that the landlord has shown that the condition of the toilet has changed based on the condition inspection report. However, Policy Guideline 40 addresses the useful life of building elements. In that guideline it lists a toilet to have a 20 year useful life. The landlord stated that the home had some renovations done but the toilets were the original ones. As the toilet were over 20 years old and has exceeded its useful life, I dismiss this portion of the landlords' application.

3. Cleaning - \$250.00

The landlord stated that the tenants left the unit dirty and required extra cleaning. The landlord stated that he had to give a rent reduction of \$250.00 to the incoming tenants as compensation for the dirty condition the unit was given to them in. The landlord stated he hired a cleaning company to come in to make the suite move in ready.

The tenant disputes this claim. The tenant stated that they left the unit "100 times better than we got it". The tenant stated that he wrote on the condition inspection report that he disagrees with the way the landlord was describing the unit.

The landlord has not provided a receipt to support his claim. The landlord has not provided sufficient evidence to meet the four part test as detailed above, specifically proof that the damage or loss exists, 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, and proof of the actual amount required to compensate for the claimed loss or to repair the damage. Based on the above I dismiss this portion of the landlords' application.

4. Delay Costs - \$250.00

The landlord stated that due to the tenant restricting access to the unit and delaying access, many of the repairs took longer than required that affected the new tenants not having full and complete access to the home. The landlord stated that he gave the new

tenants \$250.00 as compensation for this and feels the subject tenants should bear that cost.

The tenant disputes this claim. The tenant stated that he provided access each and every time the landlord provided him with proper notice to enter the suite. The tenant stated that he wanted the repairs done more than anyone.

The landlord has failed to provide sufficient evidence to meet any of the four grounds and I therefore dismiss this portion of the landlords' application.

5. Outdoor siding - \$1260.00

The landlord stated that since the tenant barbequed a lot he made the siding on the home soft and needs to be replaced. The landlord provided a quote.

The tenant disputes this claim. The tenant stated that the condition inspection report does not mention this and that the landlord hasn't fixed anything to date.

The landlord has not provided sufficient evidence to meet the four part test as detailed above, specifically proof that the damage or loss exists, 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, and proof of the actual amount required to compensate for the claimed loss or to repair the damage as he has not suffered any "out of pocket costs" as of this date. Based on the above I dismiss this portion of the landlords' application.

6. Plants and Shrubbery - \$1050.00

The landlord stated that the tenant gave the next door neighbor his consent to remove all the plants and shrubbery on the easterly fence. The landlord stated that he did not consent to have the plants removed.

The tenant disputes this claim. The tenant stated that he has really no idea what the landlord is talking about in regards to this claim but adamantly denies ever giving the neighbor permission to remove plants from the property.

The landlord has not provided sufficient evidence to meet the four part test as detailed above, specifically proof that the damage or loss exists, 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, and proof of the actual amount required to compensate for the claimed loss or to repair the damage. Based on the above I dismiss this portion of the landlords' application.

The landlord has been awarded \$735.38. The tenant has been awarded \$789.02. I apply the landlords' award against the tenants leaving a balance owing to the tenant of \$53.64. The tenant is also entitled to the return of security and pet deposit for a total award of \$2703.64.

As neither party was completely successful in their application I decline to make a finding in regards to the filing fee and each party must bear that cost.

### Conclusion

The tenants have established a claim for \$2703.64. I grant the tenant an order under section 67 for the balance due of \$2703.64. 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: September 28, 2015

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Residential Tenancy Branch

