



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for authority to keep all or part of the tenant’s security deposit, for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement, and to recover the cost of the filing fee.

The landlord and tenant attended the teleconference hearing and provided affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the testimony and documentary evidence is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed that he received and reviewed the landlord’s documentary evidence prior to the hearing and that he did not serve any documentary evidence in response to the landlord’s application. As a result, I find the tenant was sufficiently served.

### Issues to be Decided

- Has the landlord provided sufficient evidence to prove his monetary claim?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant’s security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on November 1, 2014 and required the tenant to provide vacant possession of the rental unit to the landlord as of May 1, 2015. Monthly rent of \$1,750 was due on the first day of each month. The tenant paid a security deposit of \$875 at the start of the tenancy, which the landlord continues to hold.

After the landlord realized that he is unable to request an unpaid \$875 pet damage deposit from the tenant once the tenancy has ended, the landlord reduced his monetary claim from \$4,235.82 to \$3,360.82 comprised of the following:

Item 1. 24 days of broken fixed term lease	\$1,380.82
Item 2. Cleaning	\$280
Item 3. Fixing walls and painting	\$320
Item 4. Missing shelf	\$75
Item 5. Repair broken tiles	\$180
Item 6. Repair water damage	\$1,000
Item 7. Replace venetian blinds	\$125
<b>TOTAL</b>	<b>\$3,360.82</b>

The parties agreed that an incoming inspection report was completed on April 7, 2015 and that the keys to the rental unit were returned on the same date to the landlord by the tenant. The outgoing inspection report was completed on November 1, 2014, the same date the tenancy started. A copy of the condition inspection report was submitted in evidence.

### Settlement Agreement and Removal of One Item

During the hearing, the parties mutually agreed to settle on two of the items described above and the landlord requested to remove item 4 from his claim. Regarding item 1, the 24 days of broken fixed term lease, the tenant agreed with this portion of the landlord's claim and agreed to pay the landlord the full \$1,380.82 amount claim, and that his security deposit of \$875 could be used towards the landlord's monetary claim. Regarding item 7, replacement of venetian blinds, the parties agreed on the amount of \$62.50 for this portion of the landlord's monetary claim. Regarding item 4, as the landlord's request to remove that item from his monetary claim does not prejudice the tenant, the landlord is permitted to remove that item from his claim. I do not grant the

landlord leave to reapply for item 4. As a result of the above, I will not consider items 1, 4, and 7 further until I account for items 1 and 7 at the end of this decision.

### Remainder of Items

**Item 2** - The landlord has claimed \$280 for cleaning of the rental unit. The landlord testified that the cleaning costs ended up costing him a total of \$315; however, since he only claimed for \$280 in his application, he is seeking the amount of \$280 as claimed. An invoice was submitted in evidence by the landlord supporting the cleaning costs of \$315. The tenant testified that the incoming condition inspection report submitted in evidence reflect that the rental unit was recently renovated. The tenant testified that his version of “reasonably clean” and the landlord’s version of “reasonably clean” differ. The tenant stated that he had a housekeeper during the tenancy but did not submit any evidence to support his testimony such as receipts or invoices. The landlord referred to the invoice dated April 10, 2015 submitted in evidence in the amount of \$315 and stated that two cleaners worked for six hours at \$25 per hour to clean the rental unit and that the rental unit was dirty. The invoice included taxes.

The landlord also referred to a letter submitted in evidence from a realtor dated September 2, 2105 that indicates that the realtor, S.H., had listed the rental unit in October 2014 and at that time it was owner occupied and had been completely renovated and showed very well. The letter also indicates that S.H. re-listed the property in early 2015 when it was tenant occupied and that he was very disappointed when he saw the condition of the property, namely that it was a “complete disaster inside and out”. Other details were also provided in the letter indicating that junk and litter and scrap material were left outside, and that inside the walls were damaged, with a water leak in the kitchen that had gone unchecked damaging the cabinets and pooling in the middle of the tiled floor and other damaged items.

The tenant stated that while he felt the outgoing portion of the condition inspection report was modified after he signed it, he did not clearly indicate what areas were modified, nor did he provide any documentary evidence to support that modifications were made to the condition inspection report, such as a different version of the condition inspection report. The landlord denied having made any changes to the condition inspection report and testified that the condition inspection report submitted in evidenced, was the same report signed by the tenant at the end of the tenancy.

The condition inspection report indicates that at the end of the tenancy, the rental unit entry, kitchen, living room, dining room, stairwell/hall, master bedroom, and exterior patio were either dirty, damaged or both.

**Item 3** – The landlord has claimed \$320 for fixing walls and painting. The landlord testified that the walls repairs and painting ended up costing him a total of \$750; however, since he only claimed for \$320 in his application, he is seeking the amount of \$320 as claimed. The landlord referred to damage from a bike in the rental unit, which the tenant did not deny. The landlord also referred to the condition inspection report that indicated several areas of damage to the rental unit such as multiples areas where nicks, gouges, and a hole were noted.

The landlord referred to an invoice in the amount of \$750 dated April 27, 2015 to paint trim in the kitchen, hallway and living room, to fill and sand holes in the hallway, living and bedroom, and to touch up paint in the hallway, living room and bedroom, plus paint supplies of drywall mud and paint. The invoice included taxes.

**Item 5** – The landlord has claimed \$180 to repair two broken tiles in the rental unit. The landlord referred to a May 15, 2015 invoice in the amount of \$210 including taxes to remove and replace two broken 18X18 inch tiles and to re-grout the tiles. The tenant did not agree that he broke the tiles. The landlord referred to the condition inspection report that lists broken tiles in two different places on the report, in addition to the summary at the end of the report.

**Item 6** – The landlord has claimed \$1,000 to repair water damage in the rental unit. The landlord submitted six colour photos in support of this portion of his claim, in addition to an invoice dated May 17, 2015 in the amount of \$1,190 which includes taxes to remove water damaged wood and MDF around peninsula sink and replace with new, check for mould in walls, for MDF and various baseboard and trim pieces and for custom stain colour.

The landlord testified that according to the water damage the tenant must have waited three months prior to advising the landlord of the leak due to the amount of damage. The tenant denied that he waited to advise the landlord of a leak in the rental unit. The tenant testified that the leak was from under the sink and that he did not use the cleaners under the sink, he used cleaners located elsewhere so had no reason to go on the sink and did not discover the leak earlier as a result. The landlord referred to the six colour photos submitted in evidence and described what the landlord described was swelling MDF and that he was not advised by the tenant until March 16, 2015, and that the photos were taken two weeks after being advised.

The landlord referred to the condition inspection report that indicates water damage, stains on walls, and stains on baseboards, which the landlord testified were all consistent with water damage in the rental unit.

### Analysis

Based on the documentary evidence, the testimony provided during the hearing, and on the balance of probabilities, I find the following.

As this claim for damages and compensation was brought against the tenant by the landlord, the landlord has the burden of proof to provide sufficient evidence to support his claim for damages and compensation under the *Act*.

I will first deal with the condition inspection report dispute between the parties. Items 2, 3, 5 and 6 are all addressed in the condition inspection report, and the tenant claims that the condition inspection report was modified after he signed it on April 7, 2015 when he returned the keys to the rental unit, which the landlord disputed. I have carefully reviewed the condition inspection report and note that items 2, 3, 5 and 6 are also referred to in similar printing and do not appear to have been added after the fact or have been modified. In reaching this conclusion I have considered that the tenant failed to provide any documentary evidence indicating a different version of the condition inspection report, and that the words describing items 2, 3, 5 and 6 do not appear to have been added in afterwards as they are not cramped or overlapping. As a result, I prefer the evidence of the landlord over that of the tenant that the condition inspection report was not modified after it was signed on April 7, 2015.

I will now consider the remainder of the items based on the evidence before me and taking into account my finding that the condition inspection report was not modified after it was signed by the parties.

**Item 2** - The landlord has claimed \$280 for cleaning of the rental unit. The tenant testified that his version of “reasonably clean” and the landlord’s version of “reasonably clean” differ. I find the landlord has provided sufficient evidence to support this portion of his claim. In reaching this decision I have considered the cleaning invoice submitted in evidence, the incoming condition inspection report clearly indicating that at the start of the tenancy the rental unit was clean, and the outgoing condition inspection report that indicates that the rental unit entry, kitchen, living room, dining room, stairwell/hall, master bedroom, and exterior patio were either dirty, damaged or both. I also have considered that two cleaners took six hours to clean the rental unit and that section 37(2) of the *Act* requires the following:

37(2) When a tenant vacates a rental unit, **the tenant must**

(a) **leave the rental unit reasonably clean, and undamaged** except for reasonable wear and tear

[my emphasis added]

Therefore, I find that the tenant breached section 37(2) of the *Act* as I find the tenant did not leave the rental unit reasonably clean and undamaged except for reasonable wear and tear as required by the *Act*. Given the above, I find the landlord is entitled to the full amount of **\$280** as claimed for this portion of his claim.

**Item 3** – The landlord has claimed \$320 for fixing walls and painting. I have considered that the tenant did not deny bike damage in the rental unit. The landlord also referred to the condition inspection report that indicated several areas of damage to the rental unit such as multiples areas where nicks, gouges, and a hole were noted.

After reviewing the condition inspection report and the invoice submitted in the amount of \$750 dated April 27, 2015 to paint trim in the kitchen, hallway and living room, to fill and sand holes in the hallway, living and bedroom, and to touch up paint in the hallway, living room and bedroom, plus paint supplies of drywall mud and paint, I find the landlord has provided sufficient evidence to support this portion of his claim. Therefore, I grant the landlord **\$320** for this portion of his claim.

**Item 5** – The landlord has claimed \$180 to repair two broken tiles in the rental unit. The tenant testified that he did not agree that he broke the tiles yet the tenant confirmed during the hearing that the rental unit was newly renovated. As a result, I find the tenant or someone permitted inside the rental unit by the tenant, had to have damaged the tiles as the invoice and condition inspection report both support that the tiles were damaged during the tenancy. Therefore, I find the landlord has met the burden of proof and is entitled to the full amount of **\$180** as claimed for this portion of his claim.

**Item 6** – The landlord has claimed \$1,000 to repair water damage in the rental unit. I have carefully reviewed all photos submitted by the landlord in support of this portion of his claim, in addition to an invoice dated May 17, 2015 in the amount of \$1,190 which includes taxes to remove water damaged wood and MDF around peninsula sink and replace with new, check for mould in walls, for MDF and various baseboard and trim pieces and for custom stain colour.

Based on the evidence before me, I find the tenant's version of events that he did not use the cleaners under the sink and had "no reason to go under there" to be highly improbable. Therefore, for this portion of the landlord's claim, I prefer the evidence of

the landlord over that of the tenant and find that the tenant waited a period of time that was unreasonable before advising the landlord of a water leak in the rental unit. I find the photos, condition inspection report, and invoice support that the water leak resulted in significant damage to the rental unit and that the tenant is liable for the damage as a result of the unreasonable delay as I find the tenant provided insufficient evidence to support that the landlord was immediately notified of a water leak. Therefore, I find the landlord has provided sufficient evidence to support this portion of his claim and is entitled to the full amount of **\$1,000** as claimed.

As the landlord's application had merit, I grant the landlord the recovery of the cost of his filing fee in the amount of **\$50**.

The landlord has established a monetary claim as follows:

Item 1. 24 days of broken fixed term lease ( <b>via mutual agreement</b> )	\$1,380.82
Item 2. Cleaning	\$280
Item 3. Fixing walls and painting	\$320
Item 5. Repair broken tiles	\$180
Item 6. Repair water damage	\$1,000
Item 7. Replace venetian blinds ( <b>via mutual agreement</b> )	\$62.50
Recovery of the cost of the filing fee	\$50
<b>TOTAL</b>	<b>\$3,273.32</b>

The landlord continues to hold the tenant's security deposit of \$875 which has accrued \$0.00 in interest since the start of the tenancy.

**Monetary Order** – I find that the landlord has established a total monetary claim in the amount of **\$3,273.32** as described above. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit of \$875. I **authorize** the landlord to retain the tenant's full \$875 security deposit in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order under section 67 for the net amount owing by the tenant to the landlord in the amount of **\$2,398.32**.

I also note that the parties have mutually agreed to settle items 1 and 7 pursuant to section 63 of the *Act*, and as a result, I **order** the parties to comply with their settlement agreement regarding items 1 and 7.

Conclusion

The landlord's application is successful.

The landlord has established a total monetary claim in the amount of \$3,273.32. The landlord has been authorized to retain the tenant's full security deposit of \$875 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order under section 67 for the net amount owing by the tenant to the landlord in the amount of \$2,398.32. Should the landlord have to enforce the monetary order, the 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.

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: October 5, 2015

---

Residential Tenancy Branch



