



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MND, MNR, MNSD, MNDC, OLC, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on November 4, 2014 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit – Section 38;
3. An Order for the Landlord's compliance – Section 62; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on November 14, 2014 for:

1. A Monetary Order for unpaid rent or utilities - Section 67;
2. A Monetary order for damages to the unit- Section 67;
3. An order to retain the security deposit – Section 38;
4. A Monetary Order for compensation – Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issues

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

### Background

The tenancy started on April 1, 2014 on a fixed term to end March 31, 2015. The tenancy ended on October 31, 2014. Rent of \$1,650.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$825.00 as a security deposit and \$825.00 as a pet deposit. The Parties mutually conducted a move-in and move-out inspection and report. The Tenant disagreed with the move-out report. The Tenant provided its forwarding address on the move-out report dated October 31, 2015.

The Tenant claims return of the security and pet deposit.

The tenancy agreement provides that "if the tenant ends the fixed term tenancy before the end of the original term . . . the landlord may treat this Agreement as being at an end. In such event the sum of \$500.00 will be paid by the tenant to the landlord as liquidated damages and not as a penalty. Liquidated damages cover the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant such as unpaid rent or for damage to the rental unit or residential property." The Landlord states that the Tenant ended the fixed term tenancy before the end date and claims \$500.00 as liquidated damages.

The Tenant states that the liquidated damages clause was added to the tenancy agreement after it was signed but the Tenant did agree. The Landlord states that the liquidated damages section was in the tenancy agreement and that the section was pointed out and initialled by the Tenant.

The Landlord states that the unit was rented for January 1, 2015 and that the new tenants were allowed to move into the unit December 15, 2014. The Landlord states that no renter could be obtained during September and October because the unit was dirty and was really difficult to attract interest. The Landlord states that the unit was cleaned and re-inspected by the mold company in November 2014 and was showed for December 2014 occupancy and on November 29, 2014 they found a tenant for January 1, 2015. The Landlord claims lost rental income for November and December 2014. The Landlord states that the unit was rented at a reduced rate of \$1,550.00 to and including April 2014 so the Landlord claims \$300.00 for each of January February and March 2015.

The Landlord states that the tenancy agreement requires the Tenant to pay half the utilities and that the Tenant has not paid the water and sewer for the period July 11 to Oct 31, 2014 of \$240.71 and hydro for the period August 25 to October 25 in the amount of \$194.80 and to Oct 31, 2014 for \$25.97. The Tenant states that he believes these bills were paid as he always pays his bills.

The Landlord states that the Tenant did some cleaning but it was insufficient. The Landlord states that the Tenant failed to clean the appliances and under the appliances, failed to clean plastic blinds and drapes, failed to clean either bathroom, failed to wash the floors and failed to remove pet scuff marks on doors. The Landlord claims \$200.00 and provides copies of emails from the person who did the work. It is noted that this person is also the Landlord's Witness.

The Tenant states that he thoroughly cleaned the whole unit and points to the photos provided by the Tenant showing him wiping the blinds, etc. The Tenant states that he was just in the process of cleaning the stove when the Landlords appeared for the move-out inspection. It was agreed that the inspection would occur at noon. The Parties agree that the inspection was done before the Tenant was finished cleaning the unit. The Tenant states that he was not given any more time to finish the cleaning. The Tenant agrees that he did not clean under the appliances and did not finish cleaning the stove.

The Landlord states that the Tenant left the parking spot with a number of leaked oil spots and that the Landlord removed them with a power washer and cleaner. The Landlord states that the mark may have been left by the Tenant's guests as well. The Landlord claims \$20.00 for his labour. The Tenant states that he owns a newer model car that does not leak and that the marks were pre-existing. The Tenant states that during the tenancy the Landlords were told that the marks were not from his car.

The Landlord states that the Tenant only returned 2 of the 3 keys provided and as a result the Landlord had to change the lock. The Landlord claims \$19.97. The Tenant does not dispute this claim.

The Landlord states that a set of the plastic blinds was broken, the drapes has stains and had to be replaced and various other items were missing such as sink strainers and stoppers. The

Landlord claims an overall amount of \$138.47. The Tenant states that all the blinds were damaged somewhat from the onset and that they were mix and matched sets. The Tenant states that the cloth drapes were washed, ironed and clean at the end of the tenancy. The Tenant refers to the Landlord's note dated October 1, 2014 about the drapes being dried on heaters.

The Landlord states that the dogs damaged the edges of the baseboard and claims \$60.00. The Tenant states that there was no damage to the baseboards by the dogs. The Landlord provided photos of baseboard edges.

The Landlord states that one wall was damaged in the same manner as the baseboard with scratch marks and claims \$60.00 for the washing and painting of this wall. No invoice was provided and the Landlord states that the labour was done by the Landlord. The Tenant states that none of the walls were damaged by scratches and that no pictures were hung on the walls.

The Landlord states that the Tenant damaged the wood floors and claims the costs to refinish the floors. The Landlord states that the floors had been refinished just prior to the tenancy. The Tenant states that the floors were damaged by years of use and abuse and not due to anything the Tenant did or failed to do.

The Landlord states that the Tenant left chips on the enamel on the stove and that the Landlord repaired those chips with enamel paint that was on hand. The Landlord claims \$50.00 for the cost of labour and supplies. No invoice was provided.

The Landlord states that the Tenant left a side of the fridge stained with some pink color. The Landlord states that they do not know how this occurred. The Landlord states that the fridge was new about 3 years ago or could be "a long time ago" or could be about 4 years old and cost over \$700.00. The Landlord claims \$50.00 for the depreciation in the value of the fridge. The Tenant states that it has no idea how the stain got there and that there was no stain on the fridge during the tenancy. The Tenant states that the fridge could be as old as 4 years.

The Tenant states that the tenancy ended after he became ill in September 2014 with chest infections and colds. The Tenant states that mold was in the main floor bathroom and the

Landlord was informed that the Tenant was becoming ill. The Tenant states that in July or August 2014 the previous tenants informed the Tenant that they had become ill while living in the unit. The Tenant states that the Landlord did not believe that mold was present so the Tenant obtained an inspection on the 3<sup>rd</sup> week of September 2014. The Tenant states that the mold inspection showed the presence of mold and set out recommendations. The Tenant states that this was sent to the Landlord.

The Tenant states that for showing the unit the Landlord booked each afternoon but did not show up  $\frac{3}{4}$  of the time and did not inform the Tenant when nobody was to attend. The Tenant states that for each of these days he had to make arrangements for his dogs to be out of the unit as the Landlord required the unit to be empty of both the Tenant and his pets for the showings. The Tenant states that the dogs could not be kennelled so he would often take the dogs to work with him. The Tenant claims for loss of use of the unit for the showing times in September and October 2014 in the equivalent amount of two month's rent. The Tenant also claims \$2,400.00 for loss of enjoyment of the unit.

The Landlord states the viewing times were scheduled but that the Landlord was waiting outside most of the time. The Landlord states that a few times the dogs were present. The Landlord states that the Tenants were never asked to leave but since the dogs had attacked other tenants the Landlord asked for them to be either caged or kennelled. The Landlord states that on October 9, 2014 the Tenant said he was okay with the showing times. The Tenant states that after the initial times the showings got ridiculous.

The Tenant states that the Landlord attended the unit to repair the mold however the Landlord used no barrier and the area was left open all week-end contrary to the recommendations. The Tenant states that he initially asked the Landlord to stop the repairs due the Tenant's concerns with the lack of the barrier however the Landlord threatened to call the police. The Landlord agrees that the Tenant was told the police would be called. The Tenant claims the cost of the report in the amount of \$420.00 and pain and suffering for the presence of mold in the amount of \$1,500.00. The Tenant did not provide any supporting medical documentation.

The Landlord states that the first time she heard about the mold was when the Tenant gave notice on September 16, 2014. The Landlord provided a copy of the email to the Landlord from

the Tenant in relation to the mold. The Landlord states that the Landlord asked to inspect the unit on September 19. The Landlord argues that the Tenant called the mold inspector without the Landlord's permission the Tenant is responsible for the cost for that inspection.

The Landlord states that it did follow protocols by installing a protective barrier and sealing off the area. The Landlord state that they started on Friday and left an air purifier over the week-end. The Landlord states that there was no visible mold. The Landlord agreed that mold was present in the grout in the bathroom. The Landlord states that the Tenant was present and saw the protective barrier, that the closet and baseboards were replaced, and that everything was treated, caulked and cleaned. The Landlord states that it was all complete by September 29, 2014. The Landlord states that previous tenants over the previous 8 years never said anything about mold.

The Landlord states that they are claiming the costs to repair the bathroom and to implement the recommendations of the inspector because the Tenant caused the mold himself. The Landlord states that the Tenant did this so that he could end the fixed term tenancy as he had no money for the rent. The Landlord bases its claim on the fact that the Tenant never reported any mold until the day that he also gave notice, never opened the bathroom windows, disconnected the bathroom fan and never cleaned the bathrooms.

The Landlord states that the Tenant deliberately broke tiles around the tub surround and bore a hole into the floor to cause the mold to appear. The Landlord refers to its photos. The Landlord states that this is the hole that the Tenant made by a drill.

The Landlord states that when they attended the unit after the inspection they found all the base board removed. The Landlord states that the Tenant did this as the inspector told the Landlord that no baseboards were removed for his inspection. The Landlord claims \$200.00 for repairing the damage done to the bathroom by the Tenant. The Landlord states that the Landlord did the labour and had spare materials to use for repairs to the unit.

The Landlord states that the mold inspector recommended that the unit be supplied with an air purifier so the Landlord provided this to the unit. The Landlord states that the Tenant did not take the purifier and it was left at the unit. The Landlords claim \$90.71 for the cost.

The Landlord states that the Tenant broke three tiles in the bathroom and claims \$60.00 for the repair of the tiles. The Landlord states that this amount includes supplies and 2 hours of labour. The Landlord states that the Tenant removed all the baseboards and casing for the purpose of the mold testing without the permission of the Landlord and claims \$60.00.

The Landlord states that after the unit was repaired by the Landlord a subsequent test was conducted to ensure no mold. The Landlord claims the cost of this test \$367.50.

The Landlord provides a Witness letter from the tenant who was living above the Tenant's unit. The Landlord states that the Tenant also complained to the Witness and asked the Witness to join him and another tenant in an application against the Landlord. The Landlord states that another tenant in the building has complained about mold and a hearing has been scheduled for the dispute on this matter.

The Tenant states that nothing was removed for the inspection and that the Tenant did not remove any baseboards either. The Tenant states that no fan was disconnected. The Tenant states that they did crack one tile but strenuously disagrees that he purposefully caused the mold.

### Analysis

Section 7 of the Act provides that where a tenant or landlord does not comply with the Act, regulation or tenancy agreement, the tenant or landlord must compensate the other for damage or loss that results. Although the Tenant appears to argue that it was within its rights to end the fixed term due to the appearance of mold, there is insufficient evidence to determine that the Landlord knew of the mold prior to the Tenant's notice to end tenancy. As such I find that the Tenant has not substantiated that the Landlord breached the Act or tenancy agreement by either act or negligence and the Tenant had no basis to end the fixed term tenancy before the end date or that the Landlord caused the Tenant to incur the cost of the inspection. I therefore dismiss the Tenant's claim for the inspection costs.

Considering that there is no evidence that the Landlord caused the mold or acted negligently to cause the mold to appear and as the Tenant provided no evidence to support that there was

any illness experienced by the Tenant or the Tenant's children that was caused by the appearance of the mold, I find that the Tenant has failed to substantiate that the presence of mold caused the illness claimed and I dismiss the claim for pain and suffering.

"Liquidated damages" is a term for a legal principle where, by agreement, one party accepts a sum of money for damages arising from the other party's breach and no other monies are then payable as damages for that breach. In this instance although the liquidated damages clause uses the costs of re-renting to describe the amount being quantified, it does not make a difference to the outcome as the amount becomes payable upon the Tenant ending the tenancy early. This amount limits or determines in advance the damages flowing from the early end of the tenancy. The clause further provides that such monies are due to the landlord in addition to other amounts such as unpaid rent or for damage to the property. I note that these additional amounts flow from different breaches of the tenancy agreement such not paying rent while occupying the unit or not leaving the unit clean and undamaged at the end of a tenancy. These amounts are not damages that would flow from an early end of the tenancy and are therefore not limited or predetermined by the liquidated damage amount.

As lost rental income is a damage that flows from an early end of tenancy and as the damages arising from an early end of tenancy have been determined by agreement in advance at \$500.00 as evidenced by the Tenant's initials, I find that the Landlord is entitled to the liquidated damages sum of **\$500.00** and I dismiss the Landlord's claim for lost rental income.

Given that the Tenant provided no evidence of payment of any utilities and considering Landlord's evidence on this point I find that the Landlord has substantiated that the Tenant failed to pay outstanding utilities to the end of the tenancy and that the Landlord is therefore entitled to unpaid utilities of **\$461.48**.

Section 37 of the Act provides 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. Given the move-out inspection report I find that the Landlord has substantiated that the parking spot was left damaged by the Tenant or the Tenant's guests. Considering the reasonable amount claimed I find that the Landlord is entitled to the **\$20.00** for cleaning the oil spots. Given that the

Tenant did not dispute the cost of **\$19.97** for the keys, I find that the Landlord is entitled to this amount.

Given the Tenant's photos I find that the Tenant did clean the unit. I also accept that the Tenant was not given additional time to finish cleaning the unit despite no time restrictions involving an incoming tenant. I find therefore that the Landlord has failed to provide evidence of reasonable steps taken to minimize cleaning costs and I dismiss this claim.

Given the lack of an invoice in relation to the claim for damage to enamel setting out the details of the total claimed amount and considering that the Landlord incurred no supply costs, I find that the Landlord has failed to substantiate the \$50.00 amount claimed and I dismiss this claim.

Considering the evidence of each Party and the lack of any notation of a stain on the fridge I find that the Landlord has not substantiated that the Tenant damaged the fridge and I dismiss the claim for depreciation to the fridge.

As some of the items being claim by the Landlord for the total amount of \$138.47 include items that could be considered damaged from reasonable wear and tear such as sink strainers, plastic blinds and considering the Tenant's believable evidence of cleaning the drapes I find that the Landlord has not provided sufficient evidence to substantiated the amount claimed and I dismiss the claim.

Considering that the Landlord's photos of the baseboard edges, if there are scratch marks as claimed by the Landlord they are not clear and do not appear to be recent. I can only reasonably detect what appears to be images of painted over marks. I find therefore that the Landlord has not substantiated any claim for damage to the baseboards and I dismiss the claims for \$60.00.

A review of the photos does not identify a damaged wall from pet scratches. As a result and considering the Tenant's evidence I find that the Landlord has not substantiated the claims for damages to a wall and I dismiss the claim for \$60.00.

An assessment of the floor photos shows what I consider to be an excessively aged wood floor and extensive wear that could not readily occur within a period of 6 months. Given the Tenant's credible evidence of washing the floors with oil I find that the Landlord has not substantiated that the floors were either left unclean or damaged by the Tenant and I dismiss the claim to refinish the floors.

The Landlord's evidence that the Tenant caused the mold to appear in a fraudulent effort to end the fixed term tenancy is based on indirect evidence. Although the Landlord points to a photo to support a deliberate attempt by the Tenant to create a hole in the tile, this photo shows what I consider more likely an area of missing caulking from normal wear and tear or even from mold damage. Although the Landlord argues that the Tenant also failed to open windows, disconnected the fan and didn't clean properly, the only supporting evidence of this comes from the upper tenant Witness.

This Witness's letter speaks primarily about conversations with another tenant. The Witness also sets out a belief of a fraudulent scheme by the Tenant to create the mold based primarily on the conversations with this other tenant. However given that the Witness also says this other tenant is brain damaged and "always intoxicated" during their conversations I consider this evidence of scheming to be unreliable and of no weight. The only direct and relevant evidence that can be discerned from the Witness letter is that from the outside of the unit the Witness saw mold grow in the Tenant's bathroom. I also consider there was no mention of baseboard removal in the Landlord's notes dated September 25, 2014 and September 29, 2014 referring to the Landlord's repairs to the bathroom. I find therefore on a balance of probabilities that the Landlords have not substantiated that the Tenant caused the mold to appear and as the Landlord is responsible for maintaining the unit, I dismiss the Landlord's claims for costs for all repairs done to the bathroom including the cost of the purifier. I also consider that the repeat mold test was done as a result of the Landlord's obligation to provide a unit suitable for habitation to the next tenant and not as a result of anything done by the Tenant and I therefore dismiss the Landlord's claim for reimbursement of the second mold test.

As there is no evidence that the Landlord entered the unit at any time without the permission of the Tenant or that the Tenant was given no choice but to agree with the Landlord's viewing

schedule, I find that the Tenant has not shown that the Landlord breached the Tenant's quiet enjoyment and I dismiss claim for compensation in relation to the showings of the unit.

As the Landlord still holds the Tenant's security and pet deposit, I deduct this combined amount of **\$1,650.00** plus zero interest from the Landlord's total entitlement of **\$1,001.45** leaving **\$648.55** owed to the Tenant.

As both Parties have had limited success with their applications I dismiss their claims to recovery of their filing fees.

#### Conclusion

I Order the Landlord to retain **\$1,001.45.00** from the security deposit plus interest of \$1,650.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$648.55**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This interim 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: October 16, 2015

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Residential Tenancy Branch

