



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord, her witness and both tenants.

In their written submissions the tenants questioned whether or not the male tenant should be considered a tenant and named as a respondent in these matters. At the outset of the hearing I questioned the parties in relation the tenancy agreement and an agreement signed by the female tenant's father (the male tenant). Prior to any determination the tenants agreed that they should both be named as respondents.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation for damage to the residential property; missing items; and other miscellanea; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agreed a written tenancy agreement was signed by them but neither party submitted a copy of the tenancy agreement. The parties did agree the tenancy began on October 6, 2015 as a 4 month and 25 day fixed term tenancy for a monthly rent of \$1,200.00 due on the 1<sup>st</sup> of each month with a security deposit of \$600.00 paid.

The parties agreed the female tenant's father signed a separate agreement stating that he agreed to pay the female tenant's rent and living expenses. As noted above the female tenant's father and the male tenant is the same person.

The parties acknowledge having ongoing discussions after the tenancy agreement was signed in regard to how the landlord determined the amount of rent, including discussions around the provision of copies of the utility bills. The parties agreed utility bills were never provided to the tenant.

The parties agreed that on January 23, 2015 the tenant provided to the landlord an email advising the landlord that she was ending the tenancy effective immediately. The landlord submitted that she did not receive the email until sometime in early February 2015. At which time she contacted her sister to go to the rental unit to ensure it was secured and did not look abandoned. The landlord confirmed she did not attempt to re-rent the unit.

The landlord seeks compensation in the amount of \$1,200.00 for lost revenue.

The parties confirmed that a move in and move out condition inspection were not completed. The landlord confirmed that she did not complete a Condition Inspection Report at either the start or end of the tenancy nor was an documented inventory created recording any items left in the home such as furniture; food; utensils; and other personal items prior to the start of the tenancy.

The landlord seeks compensation for a number of items that she indicates are missing which include: salt shaker; 4 drinking glasses; plastic flipper (kitchen); can opener; metal mixing bowl; cooking pot; 6 steak knives; Henckel butcher knife; cheese grater; peeler; measuring cup; large bath towel; laundry hamper; 12 pack of sharpies; Buddha bust statue with jewelry; antique shelf (family heirloom); another laundry hamper; round antique side table; 3 unused painting canvases; a vintage oil painting; decorative wall fabric; silver round wall mirror; canned food goods; toolbox; picquic (screw driver); hammer; pack of full staples; staple gun; Olfa knife; full pack of Olfa blades; needle nose plyers; bull nose plyers; hex key set; and a clamp.

The landlord seeks \$1,487.00 in compensation for these items. The landlord has submitted photographs of what appear to be cost estimates obtained online for several of the items claimed above. These estimates do include any for replacement of the Buddha bust or the antique shelf. It is not clear from the photographs where each of these estimates was obtained from or when these estimates were obtained.

The landlord's witness testified that she had been in the rental unit just before the start of the tenancy and could confirm that there had been a Buddha bust and an antique shelf in the rental unit. She also testified that after the landlord returned to live in the rental unit the landlord had to borrow a number of kitchen utensils.

The landlord also submitted the tenant broke a number of items including a plantation shutter; a broom; a shovel; a picture frame; front window of the house; and a lampshade. The landlord seeks compensation in the amount of \$800.00 including \$502.00 specifically for front window repairs.

The tenant acknowledges, in her emails to the landlord, that she broke the front window, when she moved the old fridge out of the rental unit after a new fridge was provided by the landlord's landlord.

The tenant submitted that she had to move the fridge because the landlord's landlord simply left it on the porch and she had to move into place and remove the old fridge. In support of this position, the tenant submitted an email exchange between herself and the landlord's landlord.

In this exchange, the landlord's landlord stated that the new fridge would have to be sat upright for 24 hours before plugging it in. The tenant then requested that the landlord leave the old fridge so that she could keep the items in there until the new fridge was ready.

The landlord also seeks compensation for gas to the airport; for her rent that she had to pay outside of the country; for a ticket to return out of the country to obtain her dog who she could not bring back with her on such short notice; for a door lock replacement; cleaning charge of \$75.00; repairs to a door; charges for changing her original flight from out of the country; and the dump fee for removal of the old fridge.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

As per the evidence of both parties I find the tenant failed to provide any evidence that the landlord had breached a material term of the tenancy agreement. While the tenant made allusions to the possibility that the rental unit was not secure, I find the tenant did provide any warning to the landlord that she thought this was a breach of a material term of the tenancy or that she may end the tenancy if the landlord did not provide better security.

Further, I find the female tenant has failed to provide any evidence to substantiate her claim that anyone had accessed the rental unit by breaking in; using a different key; or was someone the landlord knew and she did not. I question the female tenant's credibility in regard to the incidents because I find it unlikely that a young person living on their own would fail to report such incidents to local police.

As a result, I find the landlord is entitled to compensation for the lost revenue for the tenants' failure to pay rent for the month of February 2015, subject to the landlord's obligation to mitigate her losses. I am satisfied that the landlord took absolutely no steps to try and re-rent the unit for the remainder of the fixed term.

While I accept the landlord was out of the country she did contact her witness who, as soon as possible, attended the property to ensure it was secure. As such, I find the landlord could have requested that the witness to seek a new tenant while the landlord was out of the country.

As a result, I find the landlord failed to mitigate her losses of rent and as such, I dismiss her claim for this compensation.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

In order to be successful in the claim for costs of repairs to a rental unit for damage caused during a tenancy the party making the claim (the landlord) must provide sufficient evidence to establish that the condition of the items requiring repair was different at the end of the tenancy than it was from the start of the tenancy. In addition, when the rental unit was completely furnished, including all household items, the landlord must provide evidence that all the items claimed were provided at the start of the tenancy.

In the case before me I find the landlord had failed to complete a move in condition inspection or a documented inventory of all items she is currently seeking compensation for and as such, with some exceptions, and as a result the landlord has failed to provide any evidence of the condition of the rental unit or the contents that were contained in the unit at the start and end of the tenancy.

The exceptions noted above, include the Buddha bust; the antique shelf, based on the confirmation from the landlord's witness; the window repairs and fridge removal based on the email correspondence between all parties; and cleaning, based on the tenant's email of January 23, 2015 where she confirms she had not cleaned the rental unit.

While I accept the landlord has established that the Buddha bust with jewelry and the antique shelf were present at the start of the tenancy I find the landlord has failed to provide any evidence to establish the value of these items. As a result, I award the landlord a nominal amount for these items of \$75.00.

In relation to the window repairs, I find the landlord's landlord left the old fridge specifically in response to the tenant's request to do so and as such, I find the tenant is responsible for the removal of the fridge, as per her agreement to do so and for the repairs to the damaged window that she confirmed resulted in her attempt to move the fridge on her own.

I accept, from the receipt provided by the landlord for repairs to the window that the cost incurred by the landlord was \$550.42. I also accept the cost of removing the fridge to the local landfill was \$25.00.

As to the cleaning, based on the description from the tenant of what she did not clean, I find the landlord's claim for \$75.00 for cleaning to be reasonable and I grant that she is entitled to this compensation.

As to the landlord's claim for the costs of additional travel expenses and rent outside of the country, I find that these are all choices made by the landlord and are not a direct result of the

tenant's actions. For example, the landlord could have had a local agent act on her behalf and in fact she did when she had her witness attend the rental unit to ensure it was secured.

As such, I dismiss this portion of the landlord's claim.

#### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$750.42** comprised of \$75.00 for replacement value; \$550.42 window repair; \$25.00 fridge removal; \$75.00 cleaning; and \$25.00 of the \$50.00 fee paid by the landlord for this application, as she was only partially successful in her claim.

I order the landlord may deduct the security deposit and interest held in the amount of \$600.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$150.42**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: October 09, 2015

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Residential Tenancy Branch

