



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent and utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant was done in accordance with section 89 of the *Act*; served by registered mail on March 04, 2015 and by a process server in person on July 06, 2015. This second package also contained the landlord extensive evidence and photographs. A sworn affidavit of service was supplied as evidence. The tenant was deemed to be served the hearing documents on July 06, 2015.

The original hearing took place with a different Arbitrator. The original Arbitrator adjourned the hearing on August 31, 2015 as the parties required more time to present evidence. An interim decision was made and a copy sent to the parties. The hearing was reconvened; however, the original Arbitrator was unable to proceed with the hearing. The landlord's application was then scheduled to be heard again by me. Due to an administrative error the hearing did not commence on November 04, 2015 and was reconvened. The parties were advised of a new date and time for the hearing and

agreed they could attend on November 19, 2015. Reconvened Hearing Notices were sent to each party from the Residential Tenancy Branch. As the original Arbitrator was not available to attend the reconvened hearing the matter was heard again from the outset by me.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant at the hearing held today, despite being served notice of this hearing in accordance with the *Act*. The tenant did not provide any documentary evidence. All of the undisputed testimony and documentary evidence of the landlord was carefully considered.

Preliminary Issues

The landlord testified that he had served the tenant with a copy of his application and Notice of Hearing package by registered mail on March 04, 2015 when the landlord filed his application. The tenant had not notified the landlord that he had moved out; he had not provided a forwarding address and did not return the keys to the unit. The landlord engaged a Skip Tracer to locate the tenant. The Skip Tracer has proved evidence of the tenant's location. The landlord then engaged a Process Server to serve the hearing documents to the tenant again. The Process Server advised the landlord that as the tenant was being evasive it was better not to serve him in person. The landlord sent the hearing package by registered mail and contacted the tenant by text message to advise the tenant to collect the hearing documents. The tenant was again evasive and the package was returned to the landlord. The Process Server then served the complete package to the tenant in person on July 06, 2015. At the original hearing the Arbitrator documented in her interim decision that the tenant accepted that he had been served the hearing documents and the landlord's documentary evidence including 258 photographs. I will note here that the landlord's digital evidence has not been considered as I am unable to view it. I find the landlord had a legitimate reason why he could not serve the tenant his hearing documents within the time frame permitted under

the *Act*, as the tenant was evasive and as the tenant did not provide a forwarding address to the landlord. It is my decision that the tenant has been served for the purpose of the *Act*.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent and utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The landlord testified that this tenancy started on August 01, 2014 for a fixed term tenancy ending on August 01, 2015. Rent for this unit was \$1,175.00 per month due on the 1st of each month in advance. The tenant paid a security deposit of \$587.50 on August 01, 2014. The tenant vacated the rental unit on February 14, 2015. A copy of the tenancy agreement has been provided in evidence by the landlord.

The landlord testified that the tenant failed to pay rent for February, 2015; the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent and utilities and applied for a Direct Request Proceeding. At this proceeding the landlord was awarded an Order of Possession and a Monetary Order for February's rent. Meanwhile the tenant vacated the rental unit on or about February 14, 2015. The landlord took possession of the rental unit on February 15, 2015 and served the tenant with the Monetary Order only. The matter of February's rent is before the Provincial Court.

The landlord testified that he started to advertise the unit and was unable to re-rent the unit until April 15, 2015. The landlord seeks to recover a loss of rent for March of \$1,175.00 and a loss of rent for two weeks of April of \$587.50.

The landlord testified that he had to mitigate his loss by getting the rental unit rented as quickly as possible and so reduced the rent by \$50.00 per month. Consequently, as this was a fixed term tenancy the landlord seeks to recover the difference in rent from April to July to an amount of \$25.00 for April and \$50.00 a month for May, June and July, 2015 to a total of \$175.00.

The landlord testified that the tenancy agreement provides a clause for late fees to be charged for any month rent is late. The landlord therefore seeks to recover a late fee of \$25.00 for February, 2015.

The landlord testified that the tenant was supposed to put the utilities into his own name and be responsible for these accounts. From August to November, 2014 no one was paying the utilities so the landlord contacted the tenant and found they were still in the landlord's name. The landlord then agreed to keep the utilities in his name. The landlord provided the tenant with a utility bill on January 08, 2015 with a 30 day demand letter. This account was for \$511.16. The tenant sent the landlord a text message saying he could not pay the bill until January 23, 2015. The landlord testified he agreed to this but the tenant did not pay the bill as agreed. Warning letters were sent to the tenant concerning utilities and by February 01, 2015 no payment had been received. Before the tenant moved out he opened all the windows and turned the heat up high. This resulted in a high hydro bill of \$225.58. Copies of the hydro bills, the warning letters, text message exchange and the demand letter have all been provide in documentary evidence. The landlord seeks to recover a total of \$744.41 from the tenant.

The landlord testified that he had rented the unit on a fixed term so it would end when the landlord was available to show the unit to new tenants in August. As this tenant breached the tenancy agreement and the tenancy ended in February, 2015 the landlord

was not available to show the unit due to work commitments outside the Province. The landlord therefore engaged the services of a colleague to deal with all aspects of re-renting the unit. This colleague was paid \$15.00 per showing except for the showings that took place when the tenant was being difficult and for five showings which were cancelled. The landlord's colleague has provided an itemized breakdown of the showings in documentary evidence and the invoice for this work. The landlord seeks to recover the cost of this work to a total of \$375.00.

The landlord testified that the unit was provided with a patio table and chairs and two heaters. These have been stolen by the tenant. The landlord testified that he has a video showing the tenant and his roommate carrying the table and chairs out of the unit. The landlord referred to the tenancy agreement showing these items were provided and the condition inspection report showing they were not in the unit at the end of the tenancy. The landlord has provided a copy of the receipt for the replacement of these items and seeks to recover \$333.76 for the table and chairs and \$145.88 for the heaters. The landlord testified that these items were nearly new and has provided the original receipts.

The landlord testified that the tenant also stole the microwave oven provided in the unit. The landlord referred to the tenancy agreement addendum which shows a secondary microwave was provided. The landlord testified that he bought the microwave for around \$180.00 but managed to replace it with one on sale for \$167.99. The landlord has provided a copy of the receipt for this item to show he mitigated his loss.

The landlord testified that as the tenant did not provide a forwarding address. The landlord engaged the services of a Skip Tracing company. The landlord seeks to recover the costs incurred for this service of \$288.75 the landlord also had to engage a Process Server as the tenant was avoiding service of the hearing documents. The landlord seeks to recover the cost for this service of \$90.00. Copies of the invoices have been provided in evidence.

The landlord testified that the tenant contravened various strata bylaws due to excessive noise, drug dealing,(the tenant was arrested for possession of Cocaine), the tenant turned the common area hall lights upside down, he disturbed other tenants and owners by playing loud music, his dog was often off the lease. He spat on the landlord's door and was heard yelling in the hallway. A warning letter was sent to the tenant in January, 2015 informing the tenant of the bylaw infractions and subsequent fines. The tenant had been provided with the strata bylaws at the start of the tenancy and was aware of his obligations under those bylaws. The landlord was eventually fined \$100.00 by the strata and has provided documentary evidence of this fine. The landlord seeks to recover this amount from the tenant.

The landlord testified that the tenant had been made aware at the start of the tenancy that half of the laminate flooring was new and the addendum to the tenancy agreement documents how to maintain the flooring with dry mopping. In the other half of the unit, namely the master bedroom and loft, the laminate flooring was only a year old. The landlord testified that there was considerable damage to the laminate floor in the unit. The tenant had left his dog alone on many occasions and the dog had urinated in areas all over the flooring. There were also deep scratches and chips in the flooring. The tenant had even acknowledged the scratches to the flooring when he sent the landlord a text message saying sorry for the scratches on the floor. The tenant had caused water damage to the flooring in some areas and by the patio door when this was left open. The flooring had bubbled up where the urine and water lay on the floor. The baseboards were also damaged and some had been ripped off. The landlord referred to his documentary evidence to corroborate this damage in the cleaner's report, the move out inspection report and the photographic evidence. The landlord seeks to recover the cost for the new laminate which the landlord managed to get on sale for \$1,921.32. The landlord understands that the half of the unit where the laminate was a year old may have some depreciation value. The landlord also seeks to recover the labour costs to install the new laminate of \$1,697.45. The landlord has provided invoices for these costs in documentary evidence.

The landlord testified that it was evident throughout the unit that the tenant and /or his guests had been smoking in the unit. There were many cigarette butts left everywhere, the ceilings were stained yellow. The unit had an overall smell of urine, the walls were stained and suffered from scratches, scuffs and dents and the tenant had written things on the walls in large letters such as FU and LOSOR. The landlord referred to the move in condition inspection report which detailed that the unit had been freshly painted at the start of the tenancy. The move out inspection details the damage to the walls and ceiling. The landlord testified that the cleaner's report, referred to the discoloration of the ceiling and walls. The landlord also referred to the warning letters and text message provided in documentary evidence about smoking in the unit. The landlord testified that he mitigated the loss by getting several quotes for painting and chose the lower quote. The landlord has provided a copy of the other quotes in evidence and the invoices for the work. The landlord seeks to recover \$575.84 for paint and supplies and \$562.50 for labour costs.

The landlord testified that the unit was left in a disgusting condition. There was garbage, urine and dirt everywhere. The tenant had not attempted to do any cleaning. All areas of the unit required a deep clean and the garbage all had to be removed. The walls also had to be cleaned prior to painting. The landlord engaged the services of a cleaner and has provided a detailed cleaning report and invoice in documentary evidence. The landlord also referred to the move out condition inspection report and his photographic evidence. The landlord obtained quotes from other cleaning companies and choose the cheapest quote in order to mitigate the loss. The landlord seeks to recover \$123.36 for cleaning supplies and \$709.25 for the cleaner's fees.

The landlord testified that the shower door was left shattered. This glass was left in the bathtub and surrounding area. This was a brand new shower door fitted when the tenant moved into the unit. The landlord seeks to recover the cost for a new shower door of \$471.45 which includes labour to fit the door. A copy of the invoice has also been provided in documentary evidence. The landlord referred to his photographic

evidence showing the broken glass, the move out condition inspection report detailing the broken shower door and the cleaner's report.

The landlord testified that as he was not available at that time of year he paid a colleague to act on his behalf to pick up supplies for the repairs to the unit. He paid his colleague \$0.50 a kilometre to do the running around plus \$20.00 an hour for his time. His colleague has provided a detailed invoice showing the time spent of 18.25 hours and a total millage of 311 kilometres. The landlord seeks to recover the total cost for this invoice of \$155.75.

The landlord testified that the tenant damaged a kitchen light fixture, one of the lights from this fixture had been pulled off and another was left dangling by the cord. The landlord sent the tenant a letter concerning this damage on January 15, 2015. The landlord referred to the cleaner's report detailing the damage and the photographic evidence showing the damage. The landlord testified that as the strata bylaws specify that a professional must make all electrical repairs the landlord was not able to replace this light fixture himself. The landlord seeks to recover the cost of the replacement light fixture of \$134.23 and the electrician's fee for installation of \$100.00. Further to this the electrician also replaced an outlet and a light switch which had been damaged by the tenant. The electrician did not charge for this work but the landlord seeks to recover the costs for the supplies of \$5.46. The landlord has provided copies of the receipts and invoice in documentary evidence.

The landlord testified that the tenant caused damage to the blinds at the master bedroom window, the patio doors and the main living room windows. The landlord referred to his photographic evidence and the move in and out inspection reports. The landlord mitigated the loss by finding a cheaper solution for the window blinds in the living room. The landlord testified that the patio door blinds and master bedroom blinds were two years old and the living room blinds were three years old. The landlord has provided copies of the receipts for these blinds and labour to remove the old blinds and

install the new ones. The landlord seeks to recover \$238.78 for the blinds and \$50.00 for labour.

The landlord testified the tenant damaged some of the window screens and removed others. Four screens were missing from the windows. These were all new when the tenant moved into the unit as shown on the move in inspection report. The landlord seeks to recover \$134.40 for the missing screens. The patio screen was left broken. The landlord had to purchase a replacement screen for \$245.28. The landlord testified the screen was a year old. As this was a retractable screen the landlord paid a further \$150.00 for its installation. The landlord has provided receipts and invoices in documentary evidence along with photographic evidence.

The landlord testified that the tenant has caused damage to the kitchen sink. This sink was three years old and was in good condition at the start of the tenancy. During the tenancy the tenant caused 31 scratches and four gouges in the sink. It appears as if the tenant has used the sink as a cutting board. The landlord referred to the move in and out inspection reports, his photographic evidence and the invoices for the replacement sink and the installation. The landlord seeks to recover \$281.74 for the replacement sink and \$404.02 for labour and materials. The landlord testified that he did obtain comparative quotes for the labour and had a relative install the sink for the cheapest quote.

The landlord testified that when the tenant broke the shower screen, the glass is likely to have caused the four gouges found in the bathtub. These were reported in the cleaner's report as they were found after she had cleaned the glass up. The landlord referred to his photographic evidence and inspection reports. The landlord obtained comparative quotes to do this work and managed to find a company that could just repair the gouges and not have to re-glaze the entire bath. The landlord has provided the invoice for this work in documentary evidence and seeks to recover the cost of \$183.75.

The landlord testified that the tenant did not replace burnt out light bulbs. Some of these were normal type bulbs; some were LED bulbs and some more specialist bulbs. The landlord referred to his inspection reports, photographic evidence and receipt's for replacement bulbs. The landlord seeks to recover \$62.27.

The landlord testified that the tenant did not return the two fobs, the mailbox key and two unit keys he was provided with at the start of the tenancy. In the addendum to the tenancy agreement there is a clause referring to the replacement costs for the fobs. The landlord has provided a receipt for replacement fobs and seeks to recover the cost of \$160.00. The addendum to the tenancy agreement also states the tenant will be charged an administrative fee of \$25.00 if the landlord has to have new keys cut. This is for the landlord's time to do this work. The landlord seeks to recover this and the cost to cut a new mailbox key and two unit keys. The landlord has provided the receipts in evidence for \$18.45.

The landlord testified that the tenant ripped off and bent the towel rail in the main bathroom and two towel rails in the second bathroom had been ripped off and were missing. The landlord referred to the move in and out condition inspection reports and his photographic evidence. The landlord seeks to recover the cost to replace these items and was able to find a cheaper alternative by purchasing a pack of towel rails for \$44.76. The landlord also had to pay \$25.00 to have the damaged towel rail removed and to install the new ones. The landlord has provided the receipt and invoice in documentary evidence.

The landlord testified that he had claimed a further estimated amount for drywall repair and advertising costs but withdrew these from his claim as the painter repaired the drywall for free and no advertising costs were incurred.

The landlord seeks an Order to permit the landlord to keep the security deposit of \$587.50 in partial satisfaction of his claim. The landlord also seeks to recover the filing fee of \$100.00.

Analysis

The tenant did not appear at the reconvened hearing to dispute the landlord's claims; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's documentary evidence and sworn testimony before me.

With regard to the landlord's claim for a loss of rent; this was a fixed term tenancy that was not due to end until August 01, 2015. The tenancy was ended as the tenant had failed to pay rent for February and vacated the rental unit on or about February 14, 2015. Consequently, the landlord is entitled to rent up to the legal end of the tenancy or the date the landlord managed to re-rent the unit.

I refer the parties to the Residential Tenancy Policy Guidelines which provides guidance on the matter of rent and states, in part, that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

Consequently as the landlord was able to re-rent the unit for April 15, 2015, I find the landlord has established a claim to recover a loss of rent for March of **\$1,175.00** and for April of **\$587.50**. Furthermore, as the landlord re-rented the unit at a lower rent by \$50.00 per month the landlord is entitled to recover this difference in rent up to the legal end of the tenancy. The landlord has therefore established a claim to recover **\$175.00**.

It is clear from the evidence before me that the tenant was responsible for the utilities and failed to pay them when due. The landlord provided the tenant with copies of the utility bills and a written demand for payment with the first bill. The second bill was provided in the landlord's evidence package. I am satisfied the tenant was aware these

bills should have been paid and consequently I find the landlord has established a claim to recover **\$744.41** from the tenant.

With regard to the landlord's claim to recover late fees for February from the tenant. I refer the parties to the Residential tenancy Branch Regulations #7 which states:

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), 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;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement and find there is a clause contained in the agreement that provides for an administrative fee of \$25.00 for late fees. Consequently, pursuant to s. 7(1)(d) of the regulations I find the landlord has established a claim to recover **\$25.00** in late fees for February, 2015

With regard to the landlord's claim to recover costs incurred to show the unit; I am satisfied from the evidence before me that the landlord entered into a fixed term agreement ending in August, 2015 at a time the landlord was available, due to his work commitments, to be around to advertise and show the unit and deal with prospective tenants. The tenant breached the terms of the tenancy agreement resulting in an earlier eviction from the rental unit. This left the landlord in the tenuous position of not being available to show the unit and had to use the services of a colleague to act as his agent in this matter. Had the tenant not breached the tenancy agreement the landlord would have been able to perform this work himself. As such I find the landlord has established a claim to recover costs incurred to re-rent the unit of **\$375.00**.

With regard to the landlord's claim to recover the fine imposed upon the landlord by the strata. I am satisfied from the evidence before me that the tenant did cause disturbances in the building and that the landlord was subsequently fined by the strata. Consequently, I find the landlord has established his claim to recover the cost of this fine of **\$100.00**.

With regard to the landlord's claim to recover costs incurred to trace the tenant and to serve hearing documents upon the tenant. The tenant left the rental unit without taking part in the move out condition inspection and without providing a forwarding address to the landlord. I am satisfied that the landlord was unable to locate the tenant and had to engage the services of the Skip Tracer and a Process Server as the tenant was avoiding service of the hearing documents. Consequently, I find the landlord has established a claim to recover the costs incurred of **\$288.75** and **\$90.00**.

With regard to the landlord's claim for damages to the unit and for the items missing from the unit; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of

the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I find the landlord has provided a significant and well organised amount of documentary evidence and extensive well organised photographic evidence to corroborate his claim. The landlord's photographic evidence, his detailed move in and move out condition inspection reports and the reports from his cleaner and contractor and agent clearly show that the tenant is responsible for damage to this unit.

Furthermore, the landlord has provided receipt's and invoices for all items related to his claim. I also find the landlord has taken steps to mitigate the loss by sourcing sale items whenever possible to keep costs down for replacement items. I have considered this when looking at the depreciation of some items of the landlord's claims.

It is therefore my decision that the landlord has met the burden of proof concerning his claim for damages, cleaning, and garbage removal, items removed from the property by the tenant and for all labour costs associated with the repair work. I have made some limited reductions for the depreciation of some items but find as the landlord did take considerable time and effort to mitigating the loss by finding replacement items in the sales the depreciation costs have been minimal.

The landlord is entitled to recover the following costs:

Replacement flooring less 10 percent depreciation	1,824.72
Labour to install new flooring	\$1,697.45
Painting including labour costs and supplies	\$1,138.35
Cleaning including supplies	\$832.61
Replacement shower door including labour	\$471.45
Colleague's hours and millage to source and collect materials	\$155.75

Light fixture plus labour	\$234.23
Outlet and switch covers	\$5.46
Replacement blinds less 20 percent depreciation	\$191.02
Labour to install blinds	\$50.00
Patio screen less 10 percent depreciation plus installation	\$370.75
Four window screens	\$134.40
Kitchen sink less 30 percent depreciation plus labour and parts to install	\$601.23
Bathtub repair	\$183.75
Replacement bulbs	\$62.27
Replacement fobs and keys plus admin fee	\$203.45
Replacement patio table, chairs and heaters	\$479.34
Replacement microwave oven	\$167.99
Towel rails and installation	\$69.76
Amount due to the landlord	\$8,873.98

As the landlord's claim has merit I find the landlord is entitled to recover the filing fee of **\$100.00**.

I Order the landlord to keep the security deposit of **\$587.50** in partial satisfaction of his claim pursuant to s. 38(4)(b) of the *Act*. There has been no accrued interest on security deposits during the tenancy.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim and find the landlord is entitled to a Monetary Order in the amount shown below:

Loss of rent	\$1,937.50
Utilities	\$744.41
Late fee	\$25.00
Cost to re-rent the unit	\$375.00
Strata fine	\$100.00
Skip tracer and process server fees	\$378.75
Damages, stolen property, cleaning	\$8,873.98
Filing fee	\$100.00
Less security deposit	(-\$587.50)
Total amount due to the landlord	\$11,947.14

A copy of the landlord's decision will be accompanied by a Monetary Order for **\$11,947.14** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial Court 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: November 19, 2015

Residential Tenancy Branch

