



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and utilities, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that the landlord handed her a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) and a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on February 15, 2015, and March 2, 2015, respectively. The tenant also confirmed that the landlord handed her a copy of his dispute resolution hearing package, and written and photographic evidence on or about June 1, 2015. I am satisfied that the landlord has duly served all of the above documents to the tenant in accordance with sections 88 and 89 of the *Act*.

At the hearing, the landlord testified that he was only seeking a monetary award for one of the \$218.75 he had requested for the re-rental of the rental premises or the \$800.00 in liquidated damages. He withdrew his application for a monetary award for liquidated damages, thus reducing the amount of his requested monetary award from \$3,948.25 to \$3,148.25.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities? Is the landlord entitled to a monetary award for losses or damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

On June 20, 2014, the parties entered into a one-year fixed term Residential Tenancy Agreement (the Agreement), a copy of which was entered into written evidence by the landlord. The Agreement established that this tenancy was to run from July 1, 2014 until June 30, 2015. Monthly rent was set at \$800.00, payable in advance on the first of each month. This amount included all utilities, unless the tenant's monthly use of hydro exceeded \$100.00, which did not occur. The landlord continues to hold the tenant's \$400.00 security deposit, paid on June 20, 2014.

The landlord's 1 Month Notice identified March 31, 2015, as the effective date to end this tenancy. The landlord's subsequent 10 Day Notice identified an effective date of March 12, 2015, to end this tenancy. The parties agreed that the tenancy ended on March 15, 2015, by which time the tenant had vacated the rental unit.

The landlord entered into written evidence a copy of the June 29, 2014 joint move-in condition inspection report. Although I heard conflicting testimony with respect to why no joint move-out inspection was conducted, the landlord entered into written evidence a copy of his report of his move-out condition inspection of March 16, 2015. The landlord also entered into evidence multiple photographs of the condition of the rental unit at the end of this tenancy, which, for the most part, confirmed the items listed as damaged in his move-out report.

The landlord's original application for a monetary award of \$3,948.25 included the following items attached to his application for dispute resolution:

<b>Item</b>	<b>Amount</b>
Recovery of Filing Fee for this Application	\$50.00
Garbage Fee	11.00
Re-key Laundry Room	29.12
New Entrance Lock	36.92
Carpet Steam Cleaning	122.85
Recovery of Photo Costs	18.65
Water Bill	203.46

Carpet Replacement	520.00
Cleaning Rental Suite (24.5 hours @ \$25.00 per hour = \$612.50)	612.50
Re-Rental of Suite (8.75 hours @ \$25.00 = \$218.75)	218.75
Unpaid March 2015 Rent	800.00
Liquidated Damages	800.00
Additional Tenants Fees (\$100.00 for January 2015; \$200.00 for February 2015; \$200.00 for March 2015)	500.00
Cleaning Supplies	25.00
<b>Total of Above Items</b>	<b>\$3,948.25</b>

As noted above, the landlord withdrew the application for a monetary award for liquidated damages at this hearing, reducing the amount of the requested monetary award to \$3,148.25.

At the hearing, the tenant initially testified that she had agreed to allow the landlord to keep her \$400.00 security deposit to compensate him for the last half month of her rent until March 15, 2015, when she vacated her rental unit. Later in the hearing, the tenant testified that she made two cash payments to the landlord in February 2015, one of which should have been applied to her March 2015 rent. She said that the landlord advised her to leave her \$800.00 cash payment in the laundry room of the rental unit. She testified that when the landlord came to the rental unit early the next morning, he maintained that there was no such cash payment in the laundry room. She said that the landlord had instructed her to make a cash payment in this method on one other occasion during her tenancy. She testified that later in February 2015, she handed the landlord \$800.00, for which she obtained a receipt from the landlord.

The landlord testified that leaving cash in the laundry room of the rental unit was the tenant's idea and not his. He said that he cautioned her against using the method of payment and rushed to the rental unit early on the morning after he discovered that she planned to use this method of paying her rent. He said that there was no cash payment in the laundry room when he arrived at the rental unit the next morning. Since the tenant said that she had left this money for him, he called the police to report this incident. He was advised that she would have to report any theft of this money to the police herself. He gave undisputed sworn testimony that she did not pursue this matter with the police.

At the hearing, the tenant agreed that she had not had enough time to clean the rental unit totally at the end of her tenancy. She maintained that the extent of the cleaning required by the landlord at the end of this tenancy was excessive. She also said that the carpets were stained when she moved into the rental unit. She said that she tried to meet with the landlord at the end of the tenancy to inspect the premises and leave him the key, but he was unavailable. She said that she also tried to leave the keys to the rental unit with another tenant, but this attempt was unsuccessful.

### Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Although there was a fixed term tenancy Agreement in place until June 30, 2015, this tenancy ended on March 15, 2015, when the tenant vacated the rental unit. The tenant confirmed that she received both the landlord's 1 Month Notice that was to take effect on March 31, 2015, and a second 10 Day Notice that was to take effect on March 12, 2015. There is undisputed evidence that the tenant did not make applications to cancel either of these Notices in accordance with either section 46(4) or 47(4) of the *Act*. I find that this tenancy ended on March 15, 2015, in accordance with the 10 Day Notice. I find that the tenant was in breach of her fixed term tenancy agreement because she failed to pay rent and vacated the rental premises prior to the June 30, 2015 date specified in that Agreement, on the basis of the landlord's 10 Day Notice. As such, the landlord is entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

In this case, I find the landlord's sworn testimony regarding the lack of payment of rent for March 2015 far more consistent and credible than that of the tenant. The tenant's initial sworn statement that her security deposit could cover her rent for the first half of March 2015 was inconsistent with her later assertion that she had paid \$800.00 twice in February 2015, the first time by way of cash left for the landlord in the laundry room. If the tenant truly did leave \$800.00 in cash in the laundry room, this was not a prudent step to take. I note that the landlord's account is supported by the 10 Day Notice he issued on March 2, 2015 for unpaid rent of \$800.00 owing for March 2015. The tenant did not dispute the 10 Day Notice and vacated the rental unit on March 15, 2015, in apparent conformity with her view that her security deposit could be used to look after her rent payment for the first 15 days of March 2015.

Under these circumstances, the tenant could have been held responsible for the landlord's loss of income for the remainder of the original Agreement. The landlord has

only sought the recovery of the unpaid rent for March 2015, as he was able to re-rent the premises to another tenant as of April 1, 2015, for the same monthly rent. I find that the tenant did not pay the rent owing for March 2015, I issue a monetary award in the landlord's favour in the amount of \$800.00, the amount owing for that month.

I have also considered the landlord's claim for a \$203.46 water bill from the municipality. As I noted at the hearing, Clause 3 of the Agreement, clearly noted that the tenant's \$800.00 in monthly rent included electricity, heat, water supply, sewage disposal and hot water. As all utilities were included in the tenant's monthly rent, I dismiss the landlord's application for a monetary award to recover a water bill paid to the municipality without leave to reapply.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlord originally included both a \$218.75 claim for the time he devoted to re-renting the rental unit to another tenant and an \$800.00 claim for liquidated damages. The claim for liquidated damages was essentially for the same item. After the landlord's withdrawal of the claim for liquidated damages, I find that the landlord's detailed written breakdown of the time and expense he devoted to finding a new tenant reflected reasonable costs of performing this task. On this point, I agree with the landlord's sworn testimony that it took less time for him to obtain a new tenant than he had initially forecast. As I find the landlord's claim for a monetary award of \$218.75 to find and obtain a new tenant eminently reasonable, I allow this portion of the landlord's claim.

The landlord's application for a monetary award totalling \$500.00 relied on Clauses 6 and 13 of the Agreement, in which the tenant agreed to pay an additional \$100.00 per month for each additional occupant occupying the premises. Any occupant of the premises for more than 14 days would result in the additional \$100.00 being added to the tenant's monthly rent. At one point, the tenant testified that no new additional occupants were living in her rental unit. Later, she agreed that she had notified the landlord that her nephew was planning to stay with her for "about two weeks or so", but

did not stay any longer than that at her residence. The tenant said that her nephew and his girlfriend were often babysitting her children, but that they did not reside with her.

The landlord testified that his hours of work led him to be in a position to check the residence periodically in the evening. He gave sworn testimony that the tenant's nephew was an occupant of the residence during the month of January 2015, and the nephew and his female friend were occupants of the residence for February and March 2015.

In this case, I find the landlord's sworn testimony more consistent and credible than that of the tenant. Her testimony changed during the hearing and did not have the same ring of truth as that provided by the landlord. Although she could have called her nephew and his female friend as witnesses or supplied a written statement from them, she did not do so. In addition, I note that the tenant did not dispute the landlord's 1 Month Notice issued in part on the basis that the tenant had allowed an unreasonable number of occupants in the rental unit and that the tenant had assigned or sublet the rental unit without the landlord's permission. Under the circumstances and on a balance of probabilities, I find it more likely than not that there were additional occupants in this rental unit for the months of January, February and March 2015. I allow the landlord's claim for a monetary award totalling \$500.00 for these additional occupants.

In considering the landlord's application for the re-keying of the laundry room and a new entrance lock, I have taken into account the provisions of section 25(1) of the *Act*. These provisions establish that a landlord bears all costs of rekeying or otherwise changing the locks so that a former tenant does not retain access to a rental unit. For these reasons, I dismiss these elements of the landlord's claim without leave to reapply.

I also dismiss the landlord's claim for the recovery of his costs for printing photographs without leave to reapply. The only hearing related costs eligible for recovery are the filing fee costs.

The remainder of the landlord's monetary claim maintains that there was damage requiring extensive cleaning, repairs and the replacement of the carpet in the rental unit. When disputes arise regarding the condition of the rental unit at the beginning and end of a tenancy, completed and signed joint move-in and move-out condition inspection reports are most useful. In this case, the parties agreed that they conducted a joint move-in condition inspection on June 29, 2014. Although the tenant testified that the carpet was stained at the beginning of this tenancy and not in good condition, the signed joint move-in condition inspection contains a single reference to a four inch stain

in the bedroom carpet. The remainder of the move-in report describes a rental unit that was provided to the tenant in good condition.

While no joint move-out condition inspection was conducted, the landlord undertook his own move-out condition inspection the day after the tenant vacated the premises. His report of the condition of the rental unit identified many portions of the rental unit were "very dirty," with some damage and garbage and debris remaining in the rental property left behind by the tenant. This report was consistent with the photographic evidence provided by the landlord of the conditions at the rental unit at the end of this tenancy.

I heard conflicting testimony as to why a joint move-out condition inspection was not undertaken. Both parties essentially identified the other as responsible for not being available to conduct this inspection. While the landlord is responsible for arranging a joint move-out condition inspection, he maintained that the tenant abandoned the rental unit without providing him with a forwarding address whereby he could make arrangements to conduct the joint move-out condition inspection. The tenant said that the landlord knew the time and date when she was moving out and made no effort to try to conduct the joint move-out inspection with her. As the tenant did not formally return her keys to the landlord, I find that she abandoned the rental unit when she vacated the rental unit on March 15, 2015.

For her part, the tenant testified that she tried to clean the rental unit as best she could, but that it was insufficient as she was anticipating returning to the rental unit to finish the cleaning. She said that she was not aware that she was responsible for cleaning behind the fridge. She did not dispute the landlord's claim that she did not have the carpets steam cleaned at the end of her tenancy, and agreed that she should be held responsible for some of the carpet stains. She said that she did leave some garbage behind at the end of her tenancy.

Based on a balance of probabilities and after considering the sworn testimony, and the landlord's written and photographic evidence, I find on a balance of probabilities that the tenant did not leave the rental unit "reasonably clean, and undamaged except for reasonable wear and tear" as required by section 37(2) of the *Act*.

I find that the landlord is entitled to recover the \$122.85 in costs of having the carpets professionally cleaned at the end of this tenancy. In addition to the photographic and written evidence, I have also taken into account Clause 23 of the Agreement in issuing this award.

I have also carefully examined the details of the landlord's itemized breakdown of the 24.5 hours of time he has claimed he spent in cleaning the rental unit, the figure used to arrive at his \$612.50 claim for cleaning. I find that a number of the items identified in this portion of his claim are not related to the cleaning of the rental unit. For example, some of the time he included in this breakdown was for changing locks, an item which a landlord is not allowed to recover. Some of the time he included was to "check" the suite, for painting, for being in attendance when the carpets were being cleaned, and for making appointments. The landlord has also applied an hourly cleaning rate of \$25.00 per hour for his time, a rate which I find excessive under the circumstances for this type of activity. Rather than the claim submitted by the landlord, I find that the landlord is entitled to a monetary award to compensate him for 14 hours (two 7-hour days) at an hourly rate of \$20.00 per hour to clean the rental unit and restore it to a state whereby it could be occupied by another tenant. In making this award, I recognize that some of the tenant's belongings needed to be taken to the dump, which required some of the landlord's time beyond the actual cleaning of the rental unit. I also allow the landlord's claim for the recovery of his \$11.00 for taking discarded materials to the dump and \$25.00 dollars for the purchase of cleaning supplies.

In considering the landlord's application for the replacement of carpet damaged by the tenant, I take into account the Residential Tenancy Branch's Policy Guideline #40, which establishes the Useful Life of certain features of a tenancy. This Guideline establishes that the normal useful life for carpet in a tenanted rental unit is set at 10 years. In this case, the landlord gave undisputed sworn testimony that the carpet was installed shortly before the previous tenant moved into the rental unit, making it no more than three years old when this tenancy ended. This would lead to a decrease in the landlord's application to replace this carpet by 30 %. However, the carpet was already partially stained when this tenancy began, as was noted in the joint move-in condition inspection report. Under these circumstances, I find that the landlord is entitled to a monetary award of \$260.00, reflecting 50% of the estimated \$520.00 replacement cost of the carpet in the rental unit.

I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour. No interest is payable over this period. As the landlord has been successful in his application, I allow him to recover his \$50.00 filing fee from the tenant.

### Conclusion

I issue a monetary Order under the following terms, which allows the landlord to recover unpaid rent, the filing fee for this application, and damages and losses arising out of this tenancy, and to retain the tenant's security deposit:



<b>Item</b>	<b>Amount</b>
Unpaid Rent March 2015	\$800.00
Re-Rental of Suite (8.75 hours @ \$25.00 = \$218.75)	218.75
Additional Occupants Fees (\$100.00 for January 2015; \$200.00 for February 2015; \$200.00 for March 2015)	500.00
Carpet Steam Cleaning	122.85
Carpet Replacement (\$520.00 x 50% = \$260.00)	260.00
Cleaning Rental Suite (14 hours @ \$20.00 per hour = \$280.00)	280.00
Dump Fee	11.00
Cleaning Supplies	25.00
Less Security Deposit	-400.00
Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,867.60</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 04, 2015

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Residential Tenancy Branch

