



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code MNR, MND, MNSD, FF

### Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 1 Month Notice to End Tenancy for Cause, issued on September 17, 2015;  
and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

At the outset of the hearing the parties agreed the tenancy has ended and the landlord no longer requires an order of possession. As the tenancy has ended and the landlord has possession of the rental unit. I dismiss the tenant's application in its entirety. I further dismiss the landlord's application for an order of possession.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties agreed that the tenancy began on August 1, 2014. Rent in the amount of \$1,700.00 was payable on the first of each month. The tenants paid a security deposit of \$850.00. The tenancy ended on November 4, 2015.

The landlord testified the tenants were required to pay a pet deposit of \$850.00, however, the only amount received was \$400.00. The tenant was unsure what amount was paid for the pet damage deposit. Therefore, I find the amount paid by the tenants as a pet deposit is the amount of \$400.00

The landlord claims as follows:

a.	Unpaid rent for October 2015	\$1,700.00
b.	Unpaid utilities	\$ 214.96
c.	Carpet cleaning	\$ 443.26
d.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$2,408.22</b>

### Unpaid rent for October 2015

The landlord testified that tenants were served with a notice to end tenancy for cause issued in September 2015. The landlord stated that the tenants then failed to pay rent for October 2015 and a 10 Day Notice to End Tenancy for Unpaid Rent was issued on October 23, 2015. The landlord seeks to recover unpaid rent for October 2015, in the amount of \$1,700.00.

The tenant testified that they did not pay rent for October 2015.

### Unpaid utilities

The landlord testified that the tenancy agreement required the tenants to pay 60% of the utilities. The landlord indicated they tenants did not pay the bill that was issued in September 2015, which covers the period of July 23 to September 22, 2015. The landlord seeks to recover the amount of \$214.96. Filed in evidence is a copy of the utility bill.

The tenant testified that they did not pay the September utility bill.

### Carpet cleaning

The landlord testified that the tenants did not have the carpets cleaned at the end of their tenancy. The landlord stated the carpets were stained. The landlord seeks to recover the amount of \$443.26. Filed in evidence is a receipt for carpet cleaning.

The tenant testified that they were locked out of the rental unit and could not clean the carpets.

The landlord argued that the tenancy had legally ended and the tenants had vacated the rental unit. The landlord stated that the tenant was at the move-out condition inspection that was scheduled; however, the tenant said they would be back in 10 minutes and then never returned.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### Unpaid rent

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

*26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

The tenant agreed they did not pay rent to the landlord as specified in the tenancy agreement. I find the tenants have breach section 26 of the Act, when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of \$1,700.00.

### Unpaid utilities

The tenant acknowledged that they did not pay the utility bill for the time period of July 23 2015 to September 22, 2015. I find the tenant breached Act, when they failed to pay their portion of the utilities stated in the tenancy agreement and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid utilities in the amount of **\$214.96**.

### Carpet cleaning

Under the Residential Tenancy Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenants are generally expected to clean the carpets if vacating after a tenancy of one year.

In this case, the evidence was that the tenants did not clean the carpet at the end of the tenancy as required. Although the tenant stated that they were locked out of the rental unit and could not clean the carpets, I find the landlord was entitled to change the locks as the tenant's personal

belongings were no longer in the rental unit and the tenancy was legally over based on the 10 Day Notice to End Tenancy.

I find the tenants have breached section 37(2) of the Act, when they failed to clean the carpets prior to the tenancy ending and this caused losses to the landlord. Therefore, I find the landlord is entitled to compensation for the cost of having the carpets cleaned in the amount of **\$443.26**.

I find that the landlord has established a total monetary claim of **\$2,408.22** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$850.00** and pet damage deposit of **\$400.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,158.22**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

#### Conclusion

The landlord is granted a monetary order and may keep the security deposit and pet deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 27, 2015

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Residential Tenancy Branch

