



# 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 cross Applications for Dispute Resolution filed by the parties, under the *Residential Tenancy Act* (the “Act”).

The Landlord filed their Application requesting a monetary order for unpaid utilities, for money owed or compensation under the Act or tenancy agreement, for an order to keep the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

The Tenant filed for a monetary order for return of the security deposit under section 38 of the Act, for losses due to lack of quiet enjoyment and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issues

During the hearing both parties made allegations against each other that have involved the police. The parties both contacted the police and were informed by the police to have no contact with each other, although it appears no formal “no contact” orders were

made. Not to downplay these events, but I find it important to note these allegations did not involve serious or violent crimes alleged by either party.

However, I do note that these allegations were of limited value to the claims both parties were making. It is apparent the parties have a significant amount of personal animosity for each other.

#### Issue(s) to be Decided

Is the Landlord entitled to the relief sought?

Is the Tenant entitled to return of the security deposit?

Is the Tenant entitled to compensation for loss of quiet enjoyment?

#### Background and Evidence

This tenancy began on or about February 1, 2012, with the parties entering into a written tenancy agreement, on a month to month basis. The monthly rent was set at \$831.00, and the Tenant paid a security deposit of \$415.50 in or about January of 2012. I note no interest is payable on deposits received in 2012.

The parties did perform incoming and outgoing condition inspection reports, although the Tenant did not agree with the Landlord's evaluation of the rental unit at the end of the tenancy. The Landlord alleges that the rental unit needed cleaning and there was damage done. There was also outstanding utility bills.

The tenancy appears to have gone along with little incident until January of 2015. It appears a wind storm occurred in the city where the rental unit is located and a window at the rental unit was damaged. The parties began disputing who was to blame for the window damage and subsequently began disputing many other things with each other following this event.

The Tenant gave the Landlord a Notice to End Tenancy and vacated the rental unit on May 31, 2015.

#### The Tenant's Claims

The Tenant is claiming for the return of the security deposit in the amount of **\$415.50**. The Tenant acknowledged she owes the Landlord for two utility bills. The Tenant has

also claimed for costs associated with filing her claim, beyond the \$50.00 filing fee for the Application. I note these costs are not recoverable under the Act and that request is dismissed.

The Tenant claims for **\$10,000.00** for loss of quiet enjoyment, harassment, undue hardship, loss of wages and excess stress.

The Landlord gave the Tenant a notice to enter the rental unit. The Tenant claims the Landlord entered the rental unit after the time he had given her in the notice.

The Tenant claims the Landlord entered the rental unit five times to paint the casing and frame around the window which had been damaged in the storm. The Tenant alleges the Landlord attempted to malign her character by filing false reports to the police. The Tenant found these were threatening her livelihood and were extremely upsetting.

The Tenant submits that the Landlord sent her many threatening emails. For example, when the Tenant attended the rental unit to pick up her voter card after the current renter alerted her it was at the rental unit. The Landlord accused her of trespassing and reported her to the police. The Tenant explained that the current renter in the subject rental unit had contacted her about some of her mail. The Tenant had evidence she had put in a change of address notice with the post office but apparently some of her mail still went to the subject rental unit.

The Tenant entered into evidence emails addressed to her from the Landlord. She alleges these were threatening, sexist and ageist.

Several emails involve the Landlord requesting payment for an outstanding utility bill. In one of the emails the Landlord comments that the Tenant is of a certain age, single and still does not have her own home. When the Tenant suggests this is a threat the Landlord replied in an email, "It is not a threat it pointing out how much a Or scab u are. Pay the bill today." [Reproduced as written.]

In another email regarding the outstanding bill the Landlord writes, "... now you are going to slither along an try to get out of paying. Just think some of the police probably own rental and would live to hear what ur reasons are for not paying. Just a druggy Easy just pay..." [Reproduced as written.]

In a subsequent email the Landlord writes, "Hide you still owe the money and it my house." [Reproduced as written.]

In another email sent at the time the Tenant was moving out the Landlord writes, "...Not sure how you plan on having the damage deposit back. Kinda as dumb as they come." [Reproduced as written.]

In evidence there are 15 notices submitted by the Tenant; some notices to enter the rental unit and some "caution" notices that the Landlord provided to the Tenant sometime after the window was broken in January of 2015.

In evidence there is also a 10 day Notice to End Tenancy for the unpaid bills and is dated May 7, 2015. The Landlord did not testify as to when he served this notice or why he did not try to enforce it. It appears the bulk of the emails referred to above were sent to the Tenant following the date of the 10 day Notice. It also appears the Tenant may have given her notice to end tenancy around this time.

The Landlord has also provided correspondence from other renters who resided at the rental unit building during the time the Tenant was there. These letters refer to her smoking marijuana in the rental unit despite it being a non-smoking building. I note that the Tenant has provided in evidence a prescription for the use of medical marijuana.

One of these other renters alleges the Tenant harmed their laundry; however, how it was harmed is not explained.

The Landlord denied he had threatened or harassed the Tenant and testified he always had treated the Tenant in a courteous and professional manner. He testified that when he wrote the email saying "Hide you still owe me money...", he was trying to collect the bill money owed and he was at the rental unit and the Tenant would not answer the door.

### The Landlord's Claims

The Landlord claims **\$125.16** in total for two separate heating bills. The Landlord testified that at the end of the tenancy the Tenant wrote him two cheques for these bills; however, the cheques were not honoured by the Tenant's bank.

The Landlord is also claiming **\$150.00** to repair a scratch in the hardwood floor. The Landlord claims the Tenant caused this scratch when she was moving out. The Landlord testified that the floors are about 100 years old and difficult to deal with. He testified that the floor would have to be sanded and oiled. In evidence he has provided a photograph of the floor.

The Landlord claims **\$60.00** for cleaning and supplies. The Landlord testified that the Tenant left the stove dirty and that there were mouse droppings in the oven. He has supplied a black and white photocopy of a photograph of the oven which shows small black blobs in the back of the oven. He alleges the sink was left dirty and he had to wash the floor. The Landlord testified there was an odd smell in the kitchen. He alleges the Tenant may have cleaned the rental unit with a "soiled" cloth.

The Landlord claims **\$36.90** for the cost of trucking materials to the dump, and **\$23.10** for the cost of recycling materials. He alleges the Tenant left rotting wood pieces in the garden and other garbage and this had to be removed to the dump. The Landlord has submitted a bill for the recycling.

The Landlord claimed **\$7.00** for bark mulch and **\$53.00** for a truck hauling soil. The Landlord's testimony on this portion of his claim was vague. In his written submissions he writes,

"[Tenant] pulled plants and threw them in the compost bin just before she left leaving holes and the garden border bricks in disarray I did ask her to fix them it seemed as though she was about to throw a brick at the house. \$7 for a can of garden mulch . time , truck \$53 to repair damage." [Reproduced as written.]

In reply to the Landlord's claims the Tenant testified that she did not scratch the floor nor did she leave the rental unit dirty. She testified that the next renter of the subject rental unit moved into the rental unit one hour after she had finished moving out.

In evidence the Tenant has provided photographs of the rental unit. In one photograph it shows the stove has been pulled out and there are what appear to be mice droppings and other messes under the stove. In the next photograph the floor is clean and the mess is gone. There are also pictures of the stove and oven and these appear to be quite clean. The Tenant testified that she used the disinfectant Dettol in the unit to clean the surfaces and this might account for the odd smell the Landlord reported. She testified that she did not use a soiled rag to clean the rental unit and this accusation indicates the malicious nature of the Landlord.

The Tenant has also supplied a letter from her son indicating that he had planted a garden at the rental unit and had removed some of the plants he had planted when the Tenant moved out. He indicates that the Landlord was aware of this and consented to the removal of the plants. The Tenant denied moving any bricks or attempting to throw a brick at the house.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the claiming party to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement by the other party. Once that has been established, the person claiming must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the person claiming did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7 of the *Act* states:

(1) If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the *Act* states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

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

### Outcome of Tenant's Claims

The Landlord applied for arbitration within 15 days of the end of the tenancy to retain a portion of the security deposit, as required under section 38. The Landlord performed incoming and outgoing condition inspection reports in accordance with the Act.

Therefore, I find the Landlord has not breached section 38 of the Act, and the Tenant is not entitled to a doubling of the deposit.

I deal further with the return of the deposit in the Landlord's claim below.

I find that the Tenant has shown she suffered a lack of quiet enjoyment of the rental unit due to the behaviour of the Landlord. However, while much of the Landlord's communication with the Tenant was rude and unprofessional, it was not all entirely in breach of the Act. Nevertheless, I do accept the testimony of the Tenant that the Landlord began acting in a retaliatory manner following the window being damaged.

I find that the multiple notices to enter and the multiple cautionary notices went beyond what would be considered professional or necessary behaviour. Many of these caution notices appear to be simply given to harass the Tenant. There is no evidence that the Landlord ever followed up on these notices or had any intention in following these with the associated legal remedies.

I also find the Landlord called the police to report the Tenant's attendance at the rental unit to pick up mail to have been completely unnecessary and a further form of harassment. There is no evidence that the Tenant's prior behaviour ever merited the Landlord to react in such a manner. For example, there is no evidence the Tenant ever acted in a violent manner or threatened harm to the Landlord or his property.

The behaviour of the Landlord and the tone of his correspondence lead me to not accept the Landlord's testimony he acted in a courteous and professional manner.

In fact, I found much of the Landlord's testimony to be contradictory and not supported by the evidence. For example, he testified that the Tenant would never admit she was smoking marijuana in the rental unit; however, there are emails from the Tenant to the Landlord indicating she had a prescription for medical marijuana and she acknowledges smoking it. If the Landlord had issues with the Tenant's smoking he should have issued the proper notice to end tenancy instead of sending a series of accusatory and derogatory emails to the Tenant.

I further find the email telling the Tenant to "hide" to be threatening, despite what the Landlord has testified. If the Landlord had served the Tenant a 10 day Notice to End Tenancy for unpaid utility bills (which I note he did not testify to), he should not have persisted in attending the rental unit and demanding the Tenant to pay him immediately at the front door. In other words, once the 10 day Notice to End Tenancy was issued the Landlord should have pursued his legal remedies rather than engaging in sending rude, derogatory and unprofessional emails to the Tenant, and constantly attending the rental unit.

The above factors lead me to conclude that the Landlord has breached section 28 of the Act and failed to provide the Tenant with quiet enjoyment of the rental unit on several occasions.

Nevertheless, I do not find the Tenant has proven she suffered a loss of \$10,000.00 due to the behaviour of the Landlord. I do not find she provided sufficient evidence that her reputation was significantly harmed in the community. Nor was there is any medical evidence that she suffered extreme stress such that it would merit an award of \$10,000.00

I find that the Tenant has shown there was some loss of quiet enjoyment of the rental unit on occasions during the three months following the incident with the window, due to the behaviour of the Landlord. Pursuant to section 67 of the Act, I find that this merits an award of damages in the amount of \$200.00 per month for three months, totalling **\$600.00**.

#### Outcome of Landlord's Claims

I accept the testimony of the Tenant and Landlord that the Tenant owes the Landlord **\$125.16** for the heating bills.

I dismiss all the other claims of the Landlord for the following reasons.



I find the Landlord had insufficient evidence to show that the scratch on the hardwood floor was caused by this Tenant. The photographs indicate these are old floors and as the Landlord testified, the floors have been used for 100 years. Even if I were to find this one scratch of the many in the floor were caused by the Tenant (which I do not), this floor has long since passed its useful life expectancy, pursuant to Policy Guideline 40, and I would have not awarded the Landlord compensation in these particular circumstances.

I find the Landlord has insufficient evidence the Tenant left the rental unit, stove or sink unclean. I find that the evidence presented by the Tenant as to the condition of the rental unit when she left it to be more compelling than that of the Landlord. The stove appears to have been cleaned very well as does the floors and other areas visible in the photographs provided by the Tenant. I further find the Landlord has failed to prove the Tenant left the yard damaged, or that the Tenant left any materials behind which the Landlord had to dispose of. I find the rental unit appears to have been left in a condition that complies with section 37 of the Act by the Tenant.

For these reasons I find the Landlord is entitled to retain \$125.16 from the security deposit for the cost of the utility bills and as the Landlord had limited success in his claim, I award \$10.00 toward the cost of the filing fee for the Application. Therefore, I award the Landlord **\$135.16** and allow him to deduct this from the security deposit held and order the Landlord to return the balance of \$280.34 to the Tenant.

I find the Tenant has proven entitlement to compensation in the amount of **\$905.34**, comprised of the balance of \$280.34 of the deposit, the sum of \$600.00 as awarded above and \$25.00 toward the filing fee for the Application. I have reduced the amount awarded for the filing fee as the Tenant's application had limited success.

I grant the Tenant a monetary order in the amount of **\$905.34** payable by the Landlord. This order must be served on the Landlord and may be enforced in the Provincial Court.

### Conclusion

I find that the Tenant has proven the Landlord breached section 28 of the Act and has suffered some loss due to the breach.

I find the Tenant acknowledged she owed the Landlord money for utility bills and the Landlord may be compensated for this by making a deduction from the security deposit.

After the set off the Tenant is granted a monetary order in the amount of **\$905.34**, which must be served on the Landlord and which may be enforced in the Provincial Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: December 11, 2015

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Residential Tenancy Branch

