



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF, MNDC, SS

### Introduction

This hearing dealt with an application by the landlord for a monetary order, and order to recover the filing fee and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. The tenants confirmed that they received the landlords' Notice of Hearing letter, Application for Dispute Resolution and evidence.

### Preliminary Issue

The tenant stated that she had dropped off evidence at the Branch shortly before today's hearing. The tenant also stated that she had witnesses attend to support her claim that she was entitled to compensation for having to deal with this "terrible" landlord and this tenancy. It was explained to the tenant and her witnesses in great detail that today's hearing would only address the items applied for by the landlord and that her late evidence would not be considered as she had not served the landlord or the Branch in accordance with the service provisions of the Act and the Rules of Procedure. It was further explained to the tenant that she was at liberty to file her own application if she and the landlord were unable to work out any other issues, she indicated that she understood. The hearing proceeded and completed on that basis.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background, Evidence

The landlord's testimony is as follows. The tenancy began on April 30, 2014 and ended on June 1, 2015. The tenants were obligated to pay \$1100.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$550.00 security deposit. The landlord stated that the tenant participated in the move in condition inspection but

not the move out. The landlord stated that on May 19, 2015 the tenant gave him verbal notice that she would be vacating on June 1, 2015. The landlord stated that he advised the tenant that was short notice and she could be responsible for June's rent. The landlord stated that he advertised regularly but was unsuccessful in renting the unit. The landlord stated that the tenant chose not to attend at the move out condition inspection.

The landlord stated that the tenant left the suite dirty which required him to hire a cleaner. The landlord stated that the tenant left many scuffs and smear stains on the walls that required the suite to be painted. The landlord stated that the tenant damaged his lawn by continually driving over it. The landlord stated that he had to have it repaired.

The landlord is applying for the following:

|    |                 |                  |
|----|-----------------|------------------|
| 1. | Loss of Revenue | \$1100.00        |
| 2. | Suite Cleaning  | \$180.00         |
| 3. | Painting Costs  | \$600.00         |
| 4. | Lawn Repair     | \$400.00         |
| 5. | Filing Fee      | \$50.00          |
| 6. |                 |                  |
|    | Total           | <b>\$2330.00</b> |

The tenant gave the following testimony. The tenant stated that she had to give short notice due to the way the landlord was treating her and that he refused to conduct repairs in the suite. The tenant stated that she painted much of the suite and that the landlord isn't being truthful about the condition at move out. The tenant stated that she left the suite very clean. The tenant stated that the landlord was repaving his driveway and putting new lawn in the yard. The tenant stated that she at no time damaged the lawn and that the landlord is trying to get her to pay for his upgrades.

### Analysis

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.

I address the landlords' claims and my findings as follows –

1. Loss of Revenue \$1100.00.

### **Tenant's notice**

**45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In the tenants own testimony she acknowledged that she gave short notice. Although the tenant stated she was justified, she did not provide any evidence to support that claim and is in breach of Section 45 of the Act. I also find that the landlord attempted to mitigate his losses as is required under Section 7(2) of the Act. Based on the above I find that the landlord is entitled to \$1100.00.

2. Cleaning - \$180.00.

The tenant disputes this claim. The landlord did not provide a receipt to reflect the costs that he paid. The landlord stated he hired a co-worker but his documentary evidence states he and his wife cleaned the unit. I found the landlords testimony to be contradictory with his documentation. With no correct supporting documentation, the landlord has failed to provide sufficient evidence to support this claim and I therefore dismiss this portion of his application.

3. Painting - \$600.00.

The tenant disputes this claim. Residential Tenancy Policy Guideline 40 addresses the useful life of building elements and states that paint has a life of 4 years. The landlord stated that the suite was painted in 2010. As the paint had already exceeded its useful life and in addition, the landlord failed to display the damage was beyond normal wear

and tear, I must dismiss this portion of the landlords claim. It is worth noting that the landlord did not provide a receipt to reflect the amount claimed.

4. Lawn repair - \$400.00.

The tenant disputes this portion of the landlords claim. The landlord provided an email from an individual who “thinks” it’s about \$250.00 to repair it, yet the landlord is seeking \$400.00. I found the landlords testimony to be contradictory with his documentation. With no correct supporting documentation, the landlord has failed to provide sufficient evidence to support this claim and I therefore dismiss this portion of his application.

As the landlord has been partially successful in his claim, he is entitled to the recovery of the \$50.00 filing fee.

Conclusion

The landlord has established a claim for \$1150.00. I order that the landlord retain the \$550.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$600.00. This order may be filed in the Small Claims Court and 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: December 03, 2015

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Residential Tenancy Branch

