



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNDC, MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, and for damages to the unit.

The landlord attended the hearing, the landlord’s agent gave testimony. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on July 24, 2015, a Canada post tracking number was provided as evidence of service.

The agent stated that the tenant purchased a house and they were able to obtain the tenant’s mailing address from the land title documents. The agent stated that they first attended the residence; however, the tenant came to the door, but refused to open it to accept service. The agent stated that they then sent the documents by registered mail which was returned unclaimed. Filed in evidence are land titled documents.

The landlord’s agent testified that the package was returned unclaimed.

Residential Tenancy Policy Guideline #17 states,

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

I find that the tenant has been duly served in accordance with Section 90 of the Act.

The landlord's agent appeared gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to 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.

#### Preliminary issue

In this case, the landlord's filed a monetary worksheet; however, the monetary worksheet does not show loss of revenue or the amount claimed for loss of revenue. Section 59 (2) of the Act states an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. Therefore, I dismiss the landlord's claim for unpaid rent and or loss of revenue with leave to reapply.

#### Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

#### Background and Evidence

The tenancy began as a fixed term which commenced on August 22, 2013 and was to expire on August 21, 2014. Rent in the amount of \$3,000.00 was payable on the 21st of each month. The tenant paid a security deposit of \$1,500.00. The tenancy ended April 2014.

The landlord claims as follows:

a.	cleaning	\$ 102.55
b.	Repair washer	\$ 246.40
c.	Damage caused unreported water leak	\$2,231.73
d.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$2,680.68</b>

#### Cleaning

The landlord's agent testified that nothing was cleaned and the entire house was dirty, which included the appliances. The landlord seeks compensation for cleaning materials in the amount of \$102.55.

### Repair washer

The landlord's agent testified that the tenant broke the handle on washing machine during their tenancy. The agent stated that the appliance repair person indicated that the door was forced open when the door mechanism was locked breaking the handle. The agent stated that tenants were informed at that time that they were responsible to have the door fixed. The agent stated the door was not fixed as required. The landlord seeks to recover the cost to make the repair in the amount of \$246.40. Filed in evidence are a photograph and a receipt for repair.

### Damage caused unreported water leak

The landlord's agent testified that when they took possession of the property on the day the tenant vacated, they discovered there was huge water bubble in the dining room ceiling, and the wood floor underneath was stained with water. The agent stated that there was a water leak coming from the upper bathroom, which was not reported during the tenancy.

The landlord's agent testified that as a direct result of the tenant not reporting a problem, that it caused unnecessary damage to the ceiling, walls and floor. The agent stated that they had to remove the entire base of the shower as mould had formed underneath and then the ceiling and walls had to be repaired and painted. The landlord seeks to recover the cost of the repair in the amount of \$2,231.73. Filed in evidence are photographs. Filed in evidence are receipts.

### 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.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

### **Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

#### Cleaning

In this case, the evidence of the landlord's agent was that the entire rental unit was not cleaned. However, the landlord has provided no documentary evidence, such as photographs for my consideration. As standard or reasonably cleaned, is not necessarily the standards of the arbitrator, the landlord or the tenant. I find the landlord has failed to provide sufficient evidence. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence.

#### Repair washer

In this case, the evidence of the landlord's agent was that during the tenancy the tenant broke the washing machine door mechanism by forcing the door open when in the locked position. I find the tenant's action is not normal wear and tear, rather is neglect. I find the tenant breached the Act, when they failed to repair the damage which was not repaired at the end of the tenancy and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the amount of **\$249.40**.

#### Damage caused unreported water leak

I accept the undisputed testimony of the landlord's agent that the tenant did not report a water leak during the tenancy. Which the damages and costs could have been minimized had the leak been reported in a timely manner. I find the tenant's action neglectful. I find the tenant breached the Act, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost to repair the damage, which is supported by receipts in the amount of **\$2,231.73**.

I find that the landlord has established a total monetary claim of **\$2,531.13** comprised of the above described amounts and the \$50.00 fee paid for this application.

Therefore, as the landlord is retaining the security deposit of **\$1,500.00**, I find it appropriate to offset the amount owed with the security deposit in partial satisfaction of

the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,031.13**.

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

### Conclusion

The landlord is granted a monetary order and may keep the security 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: January 21, 2016

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Residential Tenancy Branch

