



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MND, MNR, MNDC, MNSD, FF

### Introduction

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

- a monetary order for unpaid rent, 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 or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlords attended the hearing by conference call and gave undisputed affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlords stated that the tenants were served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on November 12, 2015 and have submitted a copy of the Canada Post Customer Receipt Tracking number as confirmation. The landlords stated that they checked the Canada Post Online Tracking Database which shows that the tenants received and signed for the package. As such, I am satisfied based upon the undisputed evidence of the landlord that the tenants were properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. The tenants are deemed served with both 5 days later as per section 90 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for unpaid rent or utilities, for money owed or compensation for damage or loss and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlords, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlords' claims and my findings around it are set out below.

This tenancy began on August 1, 2014 on a fixed term tenancy ending on June 30, 2019 as shown by the submitted copy of the signed tenancy agreement dated May 23, 2014. The tenancy ended as a result of an Order of Possession being granted to the landlord on October 19, 2015. The monthly rent was \$1,300.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$650.00 was paid on May 23, 2014.

The landlord seeks a monetary claim of \$24,458.25 which consists of:

\$7,060.03	Lawyer Fees
\$100.00	Late Rent Fees (\$25.00X4)
\$500.00	Cleaning/Dump Fees (16hrsX\$25.00+\$100.00)
\$15,000.00	Structural Roof Damage
\$400.00	Removal of Satellite (Xplornet)
\$95.31	Copies & Ink (Staples)
\$922.96	Tractor Repair (Kamlee Equipment Ltd.)
\$33.41	Tractor Repairs (Parts-Delivery-Greyhound)
\$346.54	Tractor Repairs (Replaced Battery and Fluids-Service)

The landlords seek recovery of lawyer fees that were retained to assist in the litigation of these disputes with the tenants. The landlords have submitted copies of 4 invoices for lawyer professional services regarding a "tenancy problem", totalling, \$7,060.03.

The landlords stated that the tenants were evicted due to unpaid rent. The landlords stated that the tenants were late paying rent on 4 occasions (August 2014, September 2014, January 2015 and November 2015). The landlords stated that clause #13 of the signed tenancy agreement provided for a \$25.00 late rent fee.

The landlords stated that only 8 hours of the claimed 16 hours of cleaning were performed. The landlords attributed the remaining 8 hours to yard work that was not yet done because of the weather. The landlords stated that the \$100.00 Dump Fee was in anticipation of rubbish removal. The landlords clarified that no yard labour was performed or Dump Fees Paid as of the date of this hearing.

The landlords stated that the tenants installed a satellite on the tin roof without permission or notice. The landlords stated that when the weather clears, the landlord would have to remove the satellite. The landlords stated that the installation of the satellite has compromised the tin

roof and needs to be replaced. The landlords rely upon an estimate for the replacement of the tin roof and removal of the satellite.

The landlord stated that the tenants were responsible for damage to the tractor which resulted in repair costs of \$922.96 (Service), \$33.41 (Delivery of Parts) and \$346.54 (Batteries and Tractor Fluids), totalling, \$1,302.91. The landlords have submitted copies of all invoices and receipts.

### 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 tenants caused the damage.

Section 72 of the *Act* addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the *Act* does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs (Lawyer Fees and Copies&Ink) are dismissed.

I find on a balance of probabilities based upon the undisputed affirmed testimony of the landlord that a monetary claim for damages/loss has been established. The landlord has provided undisputed affirmed testimony that the tenants were late paying rent on 4 occasions and were subject to a \$25.00 late rent fee as per the signed tenancy agreement. On this basis, I find that the landlords have established a claim for \$100.00 in late rent charges.

Although the landlords have applied for \$500.00 in cleaning and dump charges, the landlords have provided direct testimony that only 8 hours of cleaning has actually occurred. The landlord has also confirmed that no dump fees have yet been incurred. On this basis, I find on a balance of probabilities that the landlord has established a monetary claim for 8 hours of cleaning at \$25.00 per hour totaling, \$200.00. The landlord's remaining portions of the claim are dismissed with leave to reapply as of the date of this hearing are premature as they have not yet been incurred.

I accept the undisputed affirmed testimony of the landlord that roof damage has occurred due to the actions of the tenants in installing a satellite on the tin roof, however as the landlord has not yet suffered a cost for repairs, I dismiss the landlord's monetary claims for roof damage of \$15,000.00 and satellite removal of \$400.00 with leave to reapply when an actual amount can be attributed to repair work.

I accept the undisputed affirmed testimony of the landlords that the tenants caused damage to a tractor which resulted in repair costs of \$1,302.91.

The landlords have established a total monetary claim of \$1602.91 which consists of:

\$100.00	late rent charges.
\$200.00	cleaning charges for 8 hours.
\$1,302.91	Tractor Repair Costs.

The landlords are also entitled to recovery of the \$100.00 filing fee. As the landlords have requested to retain all or part of the \$650.00 security deposit, in using the offsetting provisions of the Act, I order that the landlord may retain the \$650.00 in partial satisfaction of the claim. No interest is payable. The landlord is granted a monetary order for \$952.91.

### Conclusion

The landlords are granted a monetary order for \$952.91.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: February 11, 2016

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Residential Tenancy Branch

