



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNR, MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for compensation under the Act and the tenancy agreement, for damage and cleaning of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both Tenants appeared at the hearing. The Landlord appeared along with his Agent, who initiated the Application on behalf of the Landlord. 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, to question the other party, and to 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 Issue

The parties were involved in one previous dispute resolution hearing and the file number is on the cover page for ease of reference (the "August Hearing").

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

### Background and Evidence

This tenancy began on or about May 1, 2014, with the parties entering into a written tenancy agreement. The monthly rent was \$1,500.00, payable on the fifth day of the month. The Tenants paid a security deposit of \$750.00 at the start of the tenancy. I note it appears the tenancy had begun in 2013, under a different tenancy agreement made prior to the particular agreement in evidence before me. I was provided no copies of the previous tenancy agreements, although those are not relevant as the final tenancy agreement governed the tenancy relationship.

The Tenants were issued a 10 day Notice to End Tenancy which they disputed in their application for dispute resolution for the August Hearing; however, at the August Hearing the Tenants had already vacated the rental unit and the other claims in their application, dealing with utility bill payments, were entirely dismissed.

The Landlord is claiming they incurred substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenants and is also claiming for months of unpaid rent.

The Landlord claims **\$535.76** to replace a broken window. The Agent for the Landlord testified he got a phone call from the Tenants saying a hockey puck had hit the inside glass of the front door. The window was broken from the inside according to the Agent. The Landlord testified he also received a phone call regarding the broken window. The Landlord testified it was a double paned window in the door and the outside glass was full intact. In evidence the Landlord submitted a letter from the company that repaired the glass door. It sets out, "In our installers opinion, this unit looks like it was broken from the inside. This is just our opinion." There is an invoice from the company for repairing the door in the amount claimed.

The Landlord testified there was a round hole in the glass and the Tenants initially told him it was broken with a hockey puck, then told him a second story that the wind slammed the door shut breaking the glass.

The Tenants argued that the window used to shift in the door and rattle. They claim the window needed to be replaced. The Tenants also argued that the window problem occurred because the Landlord allowed mold to build up.

The female Tenant testified that neither of the adult Tenants was home at the time the window was broken. The female Tenant testified that when she came home the puck was outside. The female Tenant testified that the children told her that they were playing outside and the door was open then the wind slammed the door shut and broke the glass.

The Landlord claims **\$82.64** to replace the ceiling fan in the rental unit. The Agent testified that there was one of the five blades missing from the fan. The fan was \$47.64 and the Agent charged \$35.00 in labour to do this repair.

The Tenants denied breaking the ceiling fan. The Tenants testified they tried it once and the blade came off. They allege it looked like it was glued on. The Tenants allege the previous renter must have broken it.

The Landlord claims **\$44.73** for the replacement of the front door lock. The Agent testified that the key was broken off in the front door and the lock had to be replaced.

The male Tenant explained the key was in the lock and when they were moving out it was hit by a sofa and broke off in the lock.

The Landlord claims **\$125.55** to replace the interior door locks. The Agent testified that the Tenants did not return the keys for the interior doors.

The Tenants initially testified they did not receive these keys from the Landlord. The Tenants then explained they had a friend renting out a portion of the rental unit from them and he used the keys and did not return the keys to them when he left.

The Tenants then testified that no incoming or outgoing condition inspection reports were done by the Landlord or the Agent.

The Landlord claims **\$70.00** for additional cleaning at the rental unit. The Agent testified that he had to clean the air conditioning unit, some windows and the screens. He testified this took a few hours and he charged a flat rate of \$75.00 for this cleaning.

The Tenants testified they do not recall the air conditioner being cleaned. The female Tenant testified she used bleach and a magic eraser to clean the rental unit and it took two or three days to clean before they vacated.

The Landlord claims **\$105.00** to finish painting the rental unit. The Agent alleges that the Tenants starting painting the interior of the rental unit but then did not complete the work. In evidence were some photographs of the painting which had not been completed.

The Tenants replied that it was the Landlord's contractor who did not complete the painting. The female Tenant testified there was no second coat applied so you could see the cut marks from the painting. The Tenants allege the paint was like that when they moved in.

The Landlord claims **\$140.00** for mowing the yard and cleaning the exterior of the rental unit up after the Tenants vacated. The Agent testified that the Tenants did not mow the lawn or clean up the yard before they left. In evidence was a photograph of the yard and grass. The Agent testified there was a bucket of cigarette butts not removed and cigarette butts were all over the yard, which had to be cleaned up. The Tenants left behind some other debris which needed to be removed. The Agent testified he allowed the Tenants to use his lawn mower and they had used it often. The Agent testified that the mower was available to the Tenants and did work.

The Tenants argued they had no lawn mower to do the yard work. The male Tenant testified that the Agent had supplied them with a lawn mower that did not work. The male Tenant further testified that he power washed outside the rental unit before they vacated.

The Landlord claims **\$85.00** to replace a part on the clothes washing machine. The Agent testified that the Tenants removed the cup that sits on top of the agitator in the washing machine. The Agent testified that the Tenants informed him they had it and would bring it back. The Agent estimated it would cost \$50.00 to replace the cup and \$35.00 to locate and pick up the part.

The Tenants replied that they could not find the cup which was used to dispense detergent or softener. The female Tenant testified that she thought this was an unreasonable amount to pay for the cup.

The Landlord claims **\$4,220.00** in outstanding rent owed by the Tenants. The Agent testified that the Tenants were short on rent of \$120.00 for March, and then did not pay rent for April, May, or June of 2015. The Agent explained that the Tenants made partial payments in March then did not pay any further rent. The Agent and the Landlord testified that they had reduced the rent owed by the Tenants to compensate them for utilities. The Landlord testified that they had previous discussions with the Tenants and that the water bill had been credited every month. The Landlord testified that his Agent had a good relationship with the Tenants until April when they asked the Tenants to move out because of unpaid rents.

The Tenants initially testified they only owe the Landlord a month and a half of rent. The male Tenant testified he paid rent in April and so they should only owe the Landlord \$2,250.00. The Tenants asserted that the utility bills had not been accounted for and that they had a new water bill of \$146.00. The Tenants went on to say they have never received a rent receipt and they always paid rent in cash. The Tenants then agreed they owed rent for May and June of 2015. The male Tenant explained he lost his job in and they started moving out in June.

### 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*.

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.

[Reproduced as written.]

Section 67 of the Residential Tenancy 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.

[Reproduced as written.]

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 Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps 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.

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

I allow the Landlord claim of **\$535.76** to replace the broken window. I accept the evidence of the independent third party glass installer that the window was broken from the inside. I also accept that the Tenants initially informed the Landlord and his Agent that the window was broken from the inside by a hockey puck. I find this to be a more reasonable explanation than mould or the wind caused the window to break. In any event the Tenants are responsible to repair the window, as this is not normal wear and tear.

I dismiss the claim regarding the ceiling fan in the rental unit. The lack of a condition inspection report to establish the condition of the rental unit at the outset of the tenancy leads me to conclude there is insufficient evidence to show the Tenants had damaged this fan as opposed to a previous renter.

I allow the claim of **\$44.73** for the replacement of the front door lock. The male Tenant acknowledged the key was broken in the lock when they were moving. The Tenants must compensate the Landlord for this loss as he had to repair this.

I allow the claim for **\$125.55** to replace the interior door locks. The Tenants were responsible for these keys and should have obtained them from their friend who rented portions of the rental unit before their friend vacated.

I note that under section 37 of the Act, the Tenants were required to return to the Landlord all keys they had. The keys were under the control of the Tenants but they neglected to get them from their friend. I find the Tenants are liable for this loss.

I allow the claim of **\$70.00** for additional cleaning at the rental unit. I find the Tenants failed to clean the air conditioner or window screens and other items to a reasonable standard before they left the rental unit. The testimony and photographs supplied by the Landlord indicate a very dirty air conditioner screen and dirty window screens and other areas that required cleaning.

Under section 37 of the Act the Tenants were required to leave the rental unit reasonably clean and undamaged, normal wear and tear excluded. I find the Tenants failed to clean the areas claimed for and left the front door lock damaged with a key broken off inside it, which I find is not normal wear and tear. Furthermore, they failed to return all the keys to the Landlord. I find the Tenants are liable to the Landlord for these losses.

I deny the claim for finishing the painting the rental unit. I find the Landlord had insufficient evidence to prove the Tenants failed to complete the painting or indeed had painted the rental unit at all.

I allow the claim of **\$140.00** for mowing the yard and cleaning the exterior of the rental unit after the Tenants vacated. The photographs indicate a yard overgrown with grass and weeds, which the Tenants were responsible to mow and take care of. I find they failed to do this. I also accept the testimony of the Agent regarding the other cleaning that had to be done such as removal of cigarette butts.

As to the claim for the part from the clothes washing machine, I find the Landlord had insufficient evidence to prove the actual cost of the part. Nevertheless, the Tenants acknowledged they removed this part and that they could not find it to return to the Landlord. I find the Landlord did suffer a loss for this item due to the Tenants. Therefore, I allow the Landlord a nominal amount of **\$50.00** to locate and purchase the part.

I allow the rent claim of **\$4,220.00** in outstanding rent owed by the Tenants. I found the Landlord's evidence straightforward on the amounts paid by the Tenants in rent over the past months of the tenancy. I also accept the evidence that the Landlord and the Tenants had agreed this amount was owed prior to the end of the tenancy.

I find that the Tenants provided contradictory evidence on when they paid rent and what amounts they paid for the rent owed. For example, they stated they owed a month and a half of rent and shortly after they agreed they owed two months of rent. I further find that the Tenants have already been compensated by the Landlord for the utility bills as I find the Landlord has adjusted the rent due.

I also note that the Tenants' claim regarding the utility bills owed was dismissed in the August Hearing as the Tenants did not supply sufficient evidence to support those claims. The Arbitrator in the August Hearing found, among other findings, that in regard to the overpaid utilities, "... the Tenants have failed to prove the dollar amount to which they are entitled." The doctrine of *res judicata* (that is a matter that has already been judged on its merits) provides that as their claims were dismissed in the August Hearing I am unable to apply those now in this hearing.

I also find the Landlord acted in a reasonable manner to mitigate the losses described above. His Agent did much of the work claimed for and the amounts charged were reasonable for this type of work, which reduced some of the losses caused by the Tenants.

Therefore, having made the above findings I award the Landlord **\$5,236.04** for the above described amounts and the \$50.00 fee paid for this application.

I order that the Landlord retain the deposit of **\$750.00** in partial satisfaction of the rent claim and I grant the Landlord an order under section 67 for the balance due of **\$4,486.04**

This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Landlord was successful on the majority of claims against the Tenants in showing they breached the Act or the tenancy agreement and was awarded \$5,236.04.

The Landlord is allowed to retain the security deposit towards the rent due and has a balance owed by the Tenants of \$4,486.04. The Landlord is granted a monetary order which may be enforced against the Tenants in Provincial Court.

This decision is final and binding on the parties, unless 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: February 10, 2016

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Residential Tenancy Branch

