



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MNSD FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The landlord applied for a monetary order for unpaid rent, for authorization to keep all or part of the security deposit, and to recover the cost of the filing fee.

The landlord, the tenant and the son of the tenant attended the teleconference hearing and gave affirmed testimony. During the hearing the parties presented their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

The parties agreed that a month to month tenancy began on November 15, 2014 and ended on September 15, 2015 when the tenant vacated the rental unit. The parties agreed that monthly rent of \$800.00 was due on the 15<sup>th</sup> day of each month and that the tenant paid a \$400.00 security deposit at the start of the tenancy, which the landlord continues to hold.

The landlord has applied for a monetary claim of \$400.00 which the landlord explained during the hearing actually totals over \$750.00 but that the landlord is only requesting \$400.00 from the tenant as part of her claim. The landlord's claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning costs	\$94.50
2. Permanent damage to carpets	\$200.00
3. Window latch	\$50.00
4. Repair wooden window sill damage	\$40.00
5. Paint wooden window sill	\$50.00
6. Cost to repair – portion of paint and repair time	\$100.00
7. Missing dining room mirror	\$100.00
8. Unpaid electrical utilities (\$16.10 for July 25-August 18, 2015 and \$24.81 for August 19-September 15, 2015)	\$40.91
9. Garden work	\$75.00
	Total being claimed is <b>\$400.00</b> although the amounts above add up to \$750.41

### Settlement Agreement

During the hearing, the parties reached a mutually settled agreement pursuant to section 63 of the *Act* on items 1 and 8 for the full amounts being claimed. As a result, items 1 and 8 will not be considered further until accounted for at the end of this decision.

### Evidence for Remainder of Landlord's Claim

Regarding item 2, the landlord has claimed \$200.00 for permanent damage to the carpets which the tenant denies was damaged by him. The landlord failed to complete an incoming and outgoing condition inspection report as required by sections 23 and 35 of the *Act*, respectively. In addition, the landlord was unable to provide the age of the carpets and stated that they were from the "70's".

Regarding items 3, 4, 5, 6, 7, the landlord has claimed a total combined amount as described above in the amount of \$340.00 however was unable to provide the age of the items being claimed or photos in support of the landlord's claim.

Regarding item 9, the landlord has claimed \$75.00 for garden work that the landlord claims the tenant violated a subsequent "Alternate Agreement" signed by the parties dated August 18, 2015 which I find was an attempt by the landlord to add an addendum to the tenancy agreement after the tenancy had already been in effect since November 15, 2014 and which will be described further below.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

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 what 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 tenant. 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 did what was reasonable 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.

**Item 2** – The landlord has claimed \$200.00 for permanent damage to the carpets which the tenant denies. As the landlord was unable to provide the age of the carpets and only indicate that they were from the "70's" I find the carpets have already exceeded their

useful life as carpets have a useful life of ten years according to Residential Tenancy Branch Policy Guideline 40 – Useful Life of Building Elements. In addition, I have considered that the landlord failed to conduct both an incoming and outgoing condition inspection report during the tenancy. Given the above, **I dismiss** this portion of the landlord's claim **without leave to reapply**, due to insufficient evidence.

**Items 3, 4, 5, 6, and 7** – The landlord has claimed \$340.00 for these portions of the landlord's claim. The landlord failed to conduct both an incoming and outgoing condition inspection report during the tenancy, and has failed to provide dated photos of the items at the start of the tenancy compared to the end of the tenancy, and has failed to provide the specific age of these items being claimed. Therefore, **I dismiss** these portions of the landlord's claim **without leave to reapply**, due to insufficient evidence.

**Item 9** – The landlord has claimed \$75.00 for garden work related to the tenant allegedly violating a subsequent "Alternate Agreement" signed by the parties dated August 18, 2015. Further to my earlier finding that the "Alternate Agreement" was an attempt by the landlord to add an addendum to the tenancy agreement after the tenancy had already been in effect since November 15, 2014, I find that such an agreement is unenforceable pursuant to section 6(1)(3) of the *Act*. To request that a tenant sign a document called "Alternate Agreement" over eight months after the tenancy began is unconscionable as it only benefits the landlord. Given the above, **I dismiss** this portion of the landlord's claim **without leave to reapply**, as I find the "Alternate Agreement" submitted in evidence is an unenforceable agreement under the *Act*.

As only a portion of the landlord's claim had merit, **I grant** the landlord the recovery of ½ of the cost of the filing fee in the amount of **\$25.00**.

**Monetary Order** – I find that the landlord has established a total monetary claim in the amount of **\$160.41**, comprised of \$94.50 for item 1 and \$40.91 for item 8, plus the recovery of \$25.00 of the cost of the filing fee. I note that items 1 and 8 were agreed to by the parties by way of a mutually settled agreement, which I order the parties to comply with pursuant to section 63 of the *Act*. As the landlord continues to hold the tenant's security deposit of \$400.00 which has accrued \$0.00 in interest since the start of the tenancy, I authorize the landlord to retain **\$160.41** of the tenant's \$400.00 security deposit in full satisfaction of the landlord's monetary claim. **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$239.59** for the security deposit balance owing by the landlord to the tenant.

**I caution** the landlord to comply with sections 23 and 35 in the future by completing incoming and outgoing condition inspection reports as required by the *Act*.

### Conclusion

A portion of the landlord's claim has merit.

The landlord has established a total monetary claim of \$160.41 as described above. The landlord has been authorized to retain \$160.41 of the tenant's \$400.00 security deposit in full satisfaction of the landlord's monetary claim. The tenant has been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$239.59 for the security deposit balance owing by the landlord to the tenant. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that 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: April 12, 2016

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Residential Tenancy Branch