



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPM, MND, MNSD, MNR, MNDC

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession as a result of a mutual agreement to end tenancy pursuant to section 55; a monetary order for unpaid rent, damage or loss as a result of this tenancy 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; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's representative ("the landlord") and the tenant attended the hearing. Both parties were given an opportunity to make submissions and testify with respect to this application. The landlord withdrew her application for an Order of possession as the tenant has vacated the rental unit. The landlord testified that the tenant had been served with the Application for Dispute Resolution package with Notice of Hearing on September 17, 2015 by registered mail. The landlord provided receipts as evidence of the mailing and the tenant confirmed receipt of the landlord's materials. I accept that the tenant was sufficiently served with this hearing package and Notice of Hearing.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession as a result of a mutual agreement to end tenancy? Is the landlord entitled to a monetary order for unpaid rent, damage or loss as a result of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy began on December 1, 2013. The rental amount of \$1395.00 is payable on the first of each month. The tenant paid a \$697.50 security deposit to the landlord as well as a \$602.50 pet damage deposit. The landlord continues to hold both deposits

after the end of the tenancy. The tenant testified that she vacated the rental unit on August 31, 2015. She testified that she provided her forwarding address to the landlord on September 9, 2015 via email. The landlord acknowledges receipt of the address but submitted that she was not required to respond by returning the deposit as email is not an acceptable form of communication of a forwarding address under the *Act*.

The tenant testified that, over the course of the tenancy, she made approximately \$3000.00 worth of improvements to the tenancy. The tenant acknowledged that, at the end of the tenancy, the condition of the lawn was poor and that she had been responsible for lawn care during the tenancy. She testified that she agreed to allow the landlord to retain \$200.00 from her security deposit for lawn care and improvement.

A copy of the condition inspection report prepared at the end of this tenancy was submitted as evidence at this hearing and signed by both parties. The report indicates that some parts of the rental unit were in fair or poor condition at move in, including damage to the window coverings and dirty cabinets and blinds. The floor and carpet in the living room and kitchen as well as the walls throughout the rental unit were described as poor and "under the kitchen sink" was described as "deteriorating" in the condition inspection report. Some electrical outlets were described as "not operational" and the door to the main bathroom was noted as damaged. The condition inspection report, at move-out indicated that only one of three keys was returned to the landlord by the tenant. A lighting fixture and the driveway were noted as damaged at move-out as well as the countertop, the oven and the refrigerator door.

The tenant testified that the rental unit was in poor condition and cleanliness when she moved in. She also testified that the owner failed to make repairs requested by the tenant at the unit including; repair to the furnace; repair to a water main; and adjusting the hot water.

On September 10, 2015, the landlord sent an email to the tenant with respect to cleaning the rental unit. She stated that she spent 6 hours cleaning on September 10, 2015 "picking debris from yard and cleaning shed and garage" and that she spent 8 hours cleaning on September 11, 2015 "cleaning kitchen and behind washer and dryer and bathroom... To say the place was filthy and unsanitary would be an understatement."

The landlord submitted a landscape quote in the amount of \$1002.75 for landscaping work including but not limited to yard clean-up, grass cutting, lawn rejuvenation, provision and laying of compost soil as well as labour costs, delivery costs and product (fertilizer, seed) costs. The landlord testified that the landscaping work needed at the

end of this tenancy was extensive and she pointed to the tenancy agreement that indicated the tenant was responsible for lawn care – “The Tenant agrees to maintain the Garden & Lawn of the Rental Unit and cut the grass a minimum of three times a month between the months of April and September; or more as required.”

The landlord testified that the tenant left a multitude of items behind at the end of her tenancy and that she was required to take those items to the dump at a cost of \$341.25 for a truck rental and \$169.80 for the cost of the dumping fees. She submitted receipts to reflect several trips to the dump at the end of this tenancy as well as photographic evidence of the removal process at the end of this tenancy. The tenant testified that she was not given an opportunity to remove her belongings at the end of the tenancy.

The landlord testified that she was required to hire someone to clean the rental unit at the end of the tenancy. She testified that she hired a friend to do so. She claimed \$350.00 to compensate for her time cleaning the residence and a further \$125.00 for her friend’s time in cleaning the residence/rental unit.

The landlord testified that, despite her original plans for the residential premises, she moved back into the home, merely to work on improvements to the home. She testified that she would not be able to re-rent or sell the rental unit in the condition that it was left by the tenant. She also testified that the residence had been left unlocked and unsecure by the tenant at the end of the tenancy.

The landlord testified that August 2015 rent in the amount of \$1395.00 was not paid by the tenant although the tenant remained in the rental unit for the month of August. The tenant testified that she and the landlord had agreed that she was not required to pay rent for the month of August 2015. The landlord conceded that \$200.00 was paid on the tenant’s behalf by a charitable organization but she claimed that the remainder (\$1195.00) of the monthly rent for August 2015 remains outstanding.

The landlord’s total claim for compensation in the form of a monetary order is as follows;

<b>Item</b>	<b>Amount</b>
Outstanding Rent (\$15.00 less as a result of 3 overpayments of \$5.00 by the tenant)	\$1180.00
Landscaping/Yard	1002.75
Dumping costs (truck rental \$341.25 and site dumps \$169.80)	511.05
Cleaning (total of 20 hours @ \$25.00 p hr)	475.00

Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order Sought by Landlord</b>	<b>\$3218.80</b>

### 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.

The landlord claims that her and her friend spent over 14 hours cleaning the rental unit after the tenant moved out. Some of the costs described relate to the exterior of the home (the yard) while some cleaning costs relate to the interior of the home. The landlord provided photographs. These photographs showed debris and dirt left in the residence; damage/chip to a door frame; unswept floors; overgrown weeds in the yard; heat registers removed within the residence; unclean appliances in the kitchen. Based on the photographic evidence and the immediate correspondence with the tenant after viewing the rental unit to describe the poor condition, I find that the landlord has proven some cleaning of the rental unit was required at the end of this tenancy.

Section 37 of the *Act* requires a tenant to leave a rental unit in reasonable condition,

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Residential Tenancy Policy Guideline No. 1 further describes the requirements of cleanliness and care of the residential premise by the tenant,

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

I find the landlord has shown that the rental unit was not left *reasonably* clean pursuant to section 37 of the *Act*. I find that the photographic evidence shows a below standard level of cleanliness when considering a reasonable standard. Therefore, I find that the landlord is entitled to a reasonable cost for interior cleaning of 8 hours at 25.00 per hour to totalling \$200.00.

The landlord provided a landscaping quote totalling \$1002.75 for the following work;

- cutting grass, trimming edges of yard, clean-up of weeds (\$140.00)
- cutting new gardening beds, weeding and pruning(\$175.00)
- lawn rejuvenation treatment (\$140.00)
- composting soil as well as pick-up and delivery of composting soil (\$140.00)
- disposal fees (\$60.00)
- fees for other supplies including fertilizing (30.00)
- labour (\$210.00 plus additional at \$35.00 per man hour as required)

The tenancy agreement provided that the tenant was responsible to maintain the garden and lawn. The tenant did not dispute the landlord's testimony that she had failed to maintain the garden and lawn regularly, particularly near the end of the tenancy. Therefore, I find the landlord is entitled to some of the costs provided in this estimate for repair and care to the yard. However, I do not find that the landlord is entitled to all of the costs and some of the costs relate to ongoing maintenance and rejuvenation that would be part of her obligation as the landlord of the property pursuant to the Policy Guideline No.1 of the *Act*.

Policy Guideline No. 1 outlines the obligations of the landlord and tenant to the maintenance and care of the residential premises and rental property including;

... Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow.

The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds. ...

Residential Tenancy Guideline No. 40 outlines the useful life of landscaping at 15 years. The landlord was unable to provide evidence as to when the last landscaping project was done at this property. However, there is some evidence that the tenant's failure to maintain the yard resulted in the need for a larger landscaping project than otherwise would have been required. Therefore, I find that the landlord is entitled to \$650.00 towards clean-up, gardening and rejuvenation efforts for the yard.

The landlord claimed \$341.25 for a truck rental and \$169.80 for the cost of the dumping fees for removal of items on the property. The tenant disputed that her belongings were left behind in the residence beyond items that she claimed that she was not given an opportunity to remove. I accept the evidence of the landlord with respect to the need to remove some items from the residence, reflected in the photographic evidence and dump receipts, as well as the need to remove some items from the yard. However, I find some of the yard work will overlap with work done by the landscapers and some was merely a result of the condition of the yard from the outset of the tenancy, as described by the tenant. Therefore, I find the landlord is entitled to a nominal amount with respect to this portion of her claim in the amount of \$200.00.

The landlord testified that she was required to hire a friend to clean the rental unit at the end of the tenancy and that she spent time cleaning the interior of the rental unit herself. She valued her and her friend's time at \$25.00 per hour and estimated 20 hours. Her photographic evidence showed cleaning was required of the rental unit after the tenant vacated the rental unit. Therefore, I find that she is entitled to \$200.00 towards her cost and time for cleaning at the end of this tenancy.

The landlord provided no evidence to show her costs for changing locks on the rental premises. This is a choice that she made based on the circumstances of the end of this tenancy and an obligation as a landlord to her next tenant or person residing on the residential premises after this tenant. For all of these reasons, and without further proof of her costs, I do not find that she is entitled to the cost of changing the locks on the unit.

The tenant contended that the landlord had agreed no payment of rent was required for the month of August 2015 rent in the amount of \$1395.00 however she was unable to provide any indication of this agreement. A copy of the mutual agreement to end tenancy was submitted for this hearing and did not provide any provision for non-payment of rent for August 2015. As the landlord was careful and thorough with respect

to putting her agreements in writing with the tenant and detailing them as addendums to any agreements signed, I find that the landlord would have likely included any rent reduction in her formal written agreements. Based on the lack of evidence to support the tenant's position with respect to August rent, I find that the landlord is entitled to recover the rental amount of \$1180.00 (in consideration of the \$15.00 overpayment by the tenant and the \$200.00 payment by a third party towards the August rent).

I note that the tenant testified that, over the course of the tenancy, she made approximately \$3000.00 worth of improvements to the tenancy. Residential Tenancy Policy Guideline No. 1 includes information with respect to renovations to residential rental premises;

Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition. 2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

Given her testimony and the condition of the rental unit at the outset, I do not doubt that the tenant made improvements to ensure a suitable living environment over the last 2 years. However, the tenant did not sufficiently prove that those improvements were sanctioned by the landlord. Nor was the tenant able to provide any receipts or other documentary evidence to support the claim with respect to the amount of money she paid for improvements. Therefore, I do not find that the landlord's monetary award can be offset by the costs claimed by the tenant.

The landlord testified that she continues to hold a \$697.50 security deposit and a \$602.50 pet damage deposit that the tenant paid at the outset of this tenancy. I allow the landlord to retain these deposits towards the monetary amount owed by the tenant.

As the landlord has been successful in her application for a monetary award, I find that the landlord is entitled to recover the \$50.00 filing fee for this application.

In summary, I find the landlord is entitled to a monetary award as follows,

<b>Item –</b>	<b>Amount</b>
Outstanding Rent	\$1180.00
Landscaping/Yard	650.00
Cleaning	200.00
Dump costs	200.00
Security Deposit	-697.50
Pet Damage Deposit	-602.50
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order to Landlord</b>	<b>\$980.00</b>

### Conclusion

The landlord withdrew her application for an Order of Possession.

I allow the landlord to retain the tenant's security deposit and pet damage deposit towards the monetary amount owed to the landlord.

I issue a monetary order to the landlord in the amount of \$980.00.

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: April 18, 2016

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**Residential Tenancy Branch**