



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to a Landlords' Application for Dispute Resolution (the "Application") made on March 24, 2016 for a Monetary Order for: unpaid rent; damages to the rental unit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to keep the Tenant's security deposit; and to recover the filing fee from the Tenant.

The Landlords appeared for the hearing and both parties provided and confirmed each other's affirmed testimony. The Landlords also provided documentary and photographic evidence prior to the hearing. There was no appearance for the Tenant during the 70 minute hearing or any submission of written evidence prior to the hearing.

The Landlords testified that they served the Tenant with a copy of the Application, the Notice of Hearing documents and their evidence by registered mail on April 7, 2016. The Landlords provided the Canada Post tracking number into oral evidence which is noted on the front page of this decision. The Landlord testified that they discovered the Tenant was living at the address where they served him and after making contact with the Tenant, the Tenant confirmed that he was now residing at that address detailed on the Landlords' Application. The Landlords also testified that the Tenant had signed for and received the required documents for this hearing on April 11, 2016 as indicated by the Canada Post website. Based on the undisputed evidence of the Landlord, I find the Tenant was served on April 11, 2016 pursuant to Section 89(1) (c) of the Act.

### Issue(s) to be Decided

- Are the Landlords entitled to the costs claimed for unpaid rent, damage to the rental unit, and for loss under the Act?
- Are the Landlords entitled to keep the Tenants' security and pet damage deposit?

### Background and Evidence

The Landlords testified that this tenancy started on July 1, 2014. A written tenancy agreement was entered into for a fixed term of two months after which the tenancy was due to end and the Tenants were required to vacate the rental unit. The parties extended the agreement a number of times, with the last agreement due to end on June 30, 2016.

Rent for the tenancy was payable by the Tenant in the amount of \$1,200.00 on the first day of each month. The Tenant paid \$600.00 as a security deposit and \$600.00 as a pet damage deposit (herein referred to as the "Deposits"), which the Landlords still retain. The Landlords completed a move-in Condition Inspection Report (the "CIR") on July 1, 2014. The tenancy ended when the Tenant failed to pay rent for March 2016 and informed the Landlord that he was vacating the rental unit on March 10, 2016 which he did. The Tenant and Landlords completed a move-out CIR on March 10, 2016, which the Landlord testified the Tenant did not sign. The move-in and move-out CIR were provided into evidence for this hearing.

The Landlord testified that the Tenant failed to pay rent on March 1, 2016. The Tenant then informed the Landlords that he would be vacating the rental unit on March 10, 2016 and that they should try and find a new renter. The Tenant vacated the rental unit on March 10, 2016 and the Landlord then made efforts to re-rent the unit which they were successful in doing for April 2016. As a result, the Landlords now seek to claim the unpaid rent for March 2016 in the amount of **\$1,200.00**.

The Landlords testified that the Tenant failed to clean the rental unit and shampoo the carpets, and return to the keys to the rental unit. In addition the Tenant damaged the: linoleum, blinds, smoke detectors and the bathtub.

The Landlords testified that after the Tenant vacated the rental unit, he left behind a large amount of personal property. The Landlord provided an extensive list of items which the Tenant had left at the end of the tenancy. The Landlord testified that in an effort to mitigate loss of rent, they had to, with the assistance of laborers, move this personal property to storage containers which they had on the rental property. The Landlord stated that as there were expensive items such as an inflatable boat, tires, televisions, this took a long time. In addition, the Tenant had gas canisters and a heavy boat engine which had to be removed for safety reasons. The Landlords testified that the Tenant stated that he would return on March 12, 2016 to remove all of his personal property but on this date he only took some of the items. Since that time the Landlord had been storing the remaining property in the storage containers and bins located on the rental property. As a result, the Landlords claim a total of **\$340.00** in labor for three people to remove the Tenant's personal belongings to the storage container and

**\$238.00** for storage fees. The Landlord calculated the storage fees based on a quote he obtained from a commercial company to store the items offsite which was provided into evidence.

The Landlords testified that they conducted cleaning themselves to mitigate loss for 17 hours at \$12.00 per hour and \$30.00 to rectify wall damage caused by the installation of a chin up bar by the Tenant, for a total of **\$234.00**. The cleaning that had to be performed was evidenced by the Landlord's extensive photographs. The Landlord also provided photographic evidence of damage caused to the linoleum from what appears to be marks caused by the Tenant storing tires inside the rental unit. The Landlord's claim a minimal amount of **\$50.00** for this damage and testified that the linoleum had been installed brand new into the rental unit three weeks after the tenancy had started.

The Landlords claim **\$99.75** for the costs of cleaning the carpets at the end of the tenancy as this was required by the signed tenancy agreement. The Landlords testified the Tenant had smoked in the rental unit and that this was specifically prohibited by the tenancy agreement. This caused staining to the ceilings for which the Landlord had to purchase paint at a cost of **\$105.00** which was evidenced by a receipt. The Landlords testified that the walls were washed down but the nicotine stains on the ceilings had to be painted over. The Landlords pointed out that they had made no claim for the labor associated with the painting of the walls.

The Landlords testified that the nicotine from the Tenant's smoking had also caused damage to the blinds in the rental unit. As a result, the Landlords had to purchase new blinds for the rental unit at a cost of **\$89.64** as evidenced by receipts provided. The Landlords also provided receipts for the cost of replacing two smoke detectors which the Tenant had damaged in the rental unit for a total of **\$28.36**. The Landlords also provided a receipt for damage that was rectified which was caused by the Tenant to the glazing on the bath tub in the amount of **\$131.25**.

The Landlords testified that the Tenant failed to return the keys to the rental unit after he had vacated it. As a result, the Landlords had the locks to the rental unit rekeyed at a cost of **\$135.77**, as evidenced by an invoice which the Landlords pointed out was a cheap cost for the labor performed.

Throughout the hearing, the Landlords referred to the move-in and move-out CIR and extensive photographic evidence to prove the damages to the rental unit claimed. The Landlords confirmed during the hearing that the reduced amount of their total monetary claim was \$2,651.77.

### Analysis

Not all of the extensive evidence provided by the Landlord has been documented above. However, I have carefully considered the Landlord's undisputed evidence on the balance of probabilities as follows.

Section 26(1) of the Act states that a tenant is required to pay rent when it is due under the tenancy agreement. I accept the Landlord's testimony that the Tenant failed to pay rent for March 2016 in the amount of **\$1,200.00** which I award to the Landlords.

Section 37(2) of the Act requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy. In addition, Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary. Policy Guideline 1 to the Act states that a tenant may be expected to steam clean or shampoo the carpets at the end of the tenancy if they have uncaged pets or smoked in the rental unit.

The Tenant provided no evidence prior to this hearing. Therefore, I rely on the undisputed testimony of the Landlords, the move-in and move-out CIR, and the invoice evidence provided which supports the costs being claimed. I also acknowledge that the Landlords undertook efforts to mitigate loss by performing the cleaning themselves and limiting costs by using cheap labor. As a result, I am satisfied that the Landlords are entitled to the costs claimed for: cleaning the rental unit; cleaning the carpets, damage to the linoleum, replacement of the two smoke detectors and blinds, painting costs for the ceilings, and damage caused to the walls and bathtub. For these items I award the full amounts claimed by the Landlords as identified above in the amount of **\$738.00**.

Section 37(2) (b) of the Act requires a tenant to give the landlord all the keys in possession of the tenant when the tenant vacates the property. I accept that the Tenant vacated the rental unit on March 10, 2016 and failed to return to the Landlords the keys to the rental unit thereafter. As a result, I award the Landlords **\$135.77** for the replacement of the rental unit door locks as evidenced by the invoice for this amount.

In relation to the evidence provided by the Landlords regarding the personal property that was left behind by the Tenant, I accept that the Tenant was required to remove all of his possession from the rental unit on March 10, 2016. I find the Tenant failed in his duty to give vacant possession back to the Landlords. I find the Landlords were justified in removing and storing the Tenant's personal property for the purpose of cleaning and

painting the rental unit so that it could be re-rented for April 2016. Had the Landlords not done so, the Tenant may have been liable for larger costs such as April 2016 rent. Based on the foregoing, I find the Landlords are also entitled to the costs associated with removal and storage of the Tenant's personal property of which only some was removed by the Tenant after March 10, 2016. The Landlords are awarded the **\$578.00** claimed in this respect.

As the Landlords have been successful in this matter, the Landlords are also entitled to the **\$100.00** filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlords is **\$2,751.77**. As the Landlords already hold \$1,200.00 in the Tenant's Deposits, I order the Landlords to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 78(2) (b) of the Act. As a result, the Landlords are awarded the outstanding balance of **\$1,551.77**.

#### Conclusion

The Tenant has breached the Act by not paying rent and causing damage to the rental unit. Therefore, the Landlords may keep the Tenants' Deposits and I grant the Landlords a Monetary Order for the remaining balance of **\$1,551.77**.

Copies of this order are attached to the Landlords' copy of this decision. This order must be served on the Tenant and may then 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: August 17, 2016

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Residential Tenancy Branch

