



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MND, MNR, MNSD, MNDC, FF, O

### Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation from the Tenant for damage to the rental unit, unpaid rent, and money owed or compensation for damage or loss under the *Act*, Regulation or tenancy agreement, authority to retain the security deposit and to recover the filing fee.

Both parties appeared at the hearing. 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, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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

### Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. What should happen with the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

### Background and Evidence

The Landlord testified on her behalf. She stated that the tenancy began September 2012. She testified that the rental unit is a manufactured home located on her property. Monthly rent was payable in the amount \$600.00 per month in addition to utilities. She testified that there was no written tenancy agreement, only a verbal agreement.

The Landlord testified that the Tenant moved out in October of 2014. She could not be more specific as to the date the Tenant vacated the rental unit.

The Landlord filed for dispute resolution on March 15, 2016 seeking the sum of \$10,483.98. Also filed in evidence a copy of the Monetary Orders Worksheet which indicated she sought compensation from the Tenant for the following:

Electricity Bill from December 2012 to 2014	\$3,460.83
Damage done by Tenant to the sewer manhole cover	\$98.15
Unpaid rent for 2013	\$3,000.00
Unpaid rent for 2014	\$3,200.00
Repairs to manufactured home	\$700.00
Cost to dispute of Tenant's waste	\$25.00
<b>TOTAL CLAIMED</b>	<b>\$10,483.98</b>

The Landlord testified that the Tenant paid the electricity bill from September 2012 to December 2012 following which he failed to pay any amount towards the electricity bill. In support of her claim for compensation for the Tenant's portion of the Electricity bill the Landlord provided a handwritten document setting out the amounts that were not paid which totalled \$3,460.83, as well as attaching the invoices from the utility company.

The Landlord's agent testified that when they received the electricity bills they provided copies to the Tenant.

The Landlord's agent further testified that the Tenant made promises that he would pay, yet did not pay. Introduced in evidence were handwritten notes from the Tenant to the Landlord confirming his difficult financial situation; the Landlord submitted that these letters confirmed he was not able to pay the electrical bills when presented.

The Landlord also submitted in evidence a letter dated June 13, 2014 addressed to the Tenant from the Canada Pension Plan confirming he had applied for disability benefits.

In terms of the amount claimed for damage to the manhole cover the Landlord provided in evidence a copy of an invoice for \$98.15. The Landlord's agent claimed that the Tenant damaged the manhole cover when he was moving out of the rental unit.

In support of the Landlord's claim for rent owing the Landlord provided in evidence another handwritten document titled "Document #3" in which they listed the amounts paid and owing. This document indicates the Tenant owed \$3,000.00 for 2013 and \$3,200.00 for 2014. Notably, in this document the Landlord claims rent up to and including September 2014.

The Landlord's agent testified that the Tenant broke a window in the rental unit and damaged the walls which cost \$700.00 to repair. Introduced in evidence was a business card from the company to which the Landlord claimed to have paid this sum. The Landlord's agent testified that they did not have a receipt as they paid cash for the window and the labour.

The Landlord also claimed that the Tenant left garbage, including his freezer and bicycle, when he vacated the rental unit and as result the Landlord paid \$25.00 to take these items to the garbage dump. In support the Landlord provided photos of these items.

The Landlord also claimed the \$100.00 filing fee for a total claim of **\$10,583.98**.

The Tenant testified on his own behalf and called two witnesses.

The Tenant dispute the amounts claimed for utilities as he claimed that he was not responsible for these charges. He further testified that he spoke to the Landlord, named on the application for dispute resolution when he first moved in, and he claimed that he was informed by the Landlord that the rent of \$600.00 per month *included* the cost of electricity. He stated that he never paid anything towards electricity and was never provided any electricity bills.

The Tenant further testified that the manufactured home did not have its own electrical meter and that the electricity for the manufactured home was located in a "pump house". He also claimed that at one time a motorhome, which was occupied by one of the Landlord's fruit pickers, was plugged into the pump house. The Tenant stated that this person was very noisy and the Tenant asked the Landlord to have the person move because he was being disturbed. The Tenant further complained that when this person plugged his motorhome into the pump house he disconnected the Tenant's electricity, including his freezer such that the Tenant's meat was ruined.

The Tenant testified that he paid a security deposit of \$300.00 and stated that the Landlord did not return his security deposit when he vacated the rental unit. When asked, the Tenant confirmed that he did not provide the Landlord with his forwarding address in writing.

The Tenant testified that he did not damage the manhole cover. He stated that approximately six months before the Tenant moved out a person hired by the Landlord cracked the manhole cover when he was mowing the lawn in front of the manufactured home.

The Tenant testified that he paid the Landlord \$600.00 in cash every month. He further testified that he never received any receipts from the Landlord for rent paid and denied that \$6,200.00 was outstanding for 2013 and 2014. He also stated that at no time did the Landlord raise the issue of any outstanding rent, and that the only conversations they had were with respect to the Landlord's promise to install a wood stove. The Tenant further stated that at no time was he asked to leave or served an eviction notice for unpaid rent as he paid his rent as required throughout the tenancy.

The Tenant testified that he did not pay for the last month of his tenancy (September 2014) and therefore owed the Landlord \$600.00. He confirmed that the Landlord has his \$300.00 security deposit and therefore he submits that he only owes the Landlord \$300.00.

In terms of the Landlord's claim for the cost to repair the window and the walls the Tenant testified that one of the windows in the bedroom and one in the kitchen was taped shut during the tenancy. He further testified that the windows were not broken when he moved out and stated that his witnesses could confirm that the windows were intact.

The Tenant also testified that the walls were damaged when he moved in. He further testified that the Landlord removed a wall panel because of a water leak which he promised to fix yet did not fix.

The Tenant denied the Landlord's claim for \$25.00 for dump fees. He stated that the Landlord told him to put his garbage on the road and he did so. He stated that how the garbage came to be "scattered along the road is beyond me".

The Tenant further submitted that an adverse inference should be drawn against the Landlords because they submitted a letter from the government which was directed to the Tenant and which he did not provide this letter to the Landlords such that he believes the Landlords must have gone into the rental unit.

When the hearing reconvened on September 22, 2015 the Tenant's witness, M.E., gave evidence. He confirmed that the manufactured home is located a couple hundred meters from the owners' single family dwelling home. M.E. stated that there did not appear to be power lines connected to the manufactured home and to his knowledge he believed that electricity was included in the rent.

M.E. testified that the person mowing the orchard grass hit the manhole cover when he was mowing the grass. M.E. stated that one day he came over to visit the Tenant and he noticed that the manhole cover had been damaged after the lawn was mowed. M.E. stated that it was damaged by the lawnmower attached to the back of a tractor.

In terms of the claim by the Landlord for compensation for the cost to replace a broken window, M.E. testified that the window was not broken when he helped the Tenant move out and that in fact, the photos submitted by the Landlord appear to be two photos taken of the same window.

M.E. stated that he could not remember exactly when the Tenant moved out.

M.E. further testified that the Landlord told the Tenant not to take away 4-5 garbage bags when the tenancy ended. M.E. stated that "we were going to take them away and the Landlord told us

to leave them there". He further confirmed that all that was there was 4-5 garbage bags, not anything else.

M.E. further testified that the wall was not damaged when the Tenant moved out. He did say that there as pre-existing damage from a broken water pipe which caused mold and affected the heat in the manufactured home and which he claimed made everybody sick.

In terms of the Landlord's claim that the Tenant moved out without notice, M.E. stated that the Landlord called the police when the Tenant was moving out and the police said: there was nothing they could do about him moving.

A.B. also testified on behalf of the Tenant. She confirmed that she has known the Tenant for many years.

She testified that the Tenant was excited when he moved in and told her what the rent as and said that utilities were included. She could not remember when he moved in but it had been a few years.

A.B. stated that she was aware the Landlords were making a claim for damage to the window and the walls. A.B. stated that in fact there was a strip of paper on the wall which was torn off and which was that way when the Tenant moved in.

A.B. further stated that she was there the day the Tenant moved out and the garbage was in bags and the Tenant was going to take it away and the Landlord told him he didn't have to take it away.

A.B. testified that the only items left by the Tenant were garbage in bags. She claimed that the Landlord put the deep freeze, the hose, the barbeque, the bike and the air-conditioner after the Tenant moved out. She stated that she "used to take a drive by to take a look". She stated that those items were not there the day he moved out but placed there later by the Landlord.

A.B. stated that the Tenant moved out because he had a 14 year old son and he moved out because the manufactured home was freezing. She stated that the Tenant asked the Landlord to put in a wood stove and the Landlord refused. She further stated that the Tenant and his son had to take hot baths to try to warm up. She also stated that the windows wouldn't close. She stated that she was there often and knew how cold it was.

The Tenant testified that the manufactured home did not have a meter, or a separate utility account. He stated that the services came from the pump house and to his knowledge was provided through the Landlord's services.

The Tenant testified that the first time he saw a bill from the Landlord for the utilities was when he received the Landlords' evidence package.

In reply to the Tenant's submissions, the Landlord testified that the utility bill shows that there were two separate meters. She stated that every time they received a bill they gave it to the Tenant. She said that he stated he could not afford to pay the bill. She reiterated that the Tenant paid September, October and November 2012 and then he failed to pay the utilities.

When I asked the Landlord why they did not issue a Notice to End Tenancy when the Tenant didn't pay for his utilities or rent, she stated that he always made excuses why he could not pay.

The Landlord stated that they issued the Tenant rent receipts when he paid rent. She confirmed they had copies but did not provide them in evidence.

The Landlord also stated that the heat did work in the rental unit as evidenced by the utility bill which was higher in the winter months than the summer because of the Tenant's use of heat.

### Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

The Landlord claims the sum of \$3,460.83 for the Tenants' share of the electrical utilities. The Tenant claims the electrical utility was included in his rent payment. He also submits that he was never provided any copies of the electrical utility bills. The Tenant's witnesses also testified that the Tenant was very excited about the cost of the rental and specifically informed them that the utilities were included.

Based on the evidence before me, the testimony of the parties and on a balance of probabilities, I find that the Landlord has failed to prove the Tenant owes \$3,460.83 for the electrical utility. There was no tenancy agreement before me to confirm the Tenant's obligation to pay towards the electrical utility. Further, while the utility bills introduced in evidence show the separate accounts, there was insufficient evidence to show that these bills were provided to the Tenant when received. Finally, the Landlord claims outstanding amounts since 2012, yet provided insufficient evidence that a demand for payment was made to the Tenant during the time these amounts were to have accumulated. It is inconceivable that the Landlord would wait until filing her application some four years later to pursue payment if these amounts were to be paid monthly. In all the circumstances I decline her request for compensation in this regard.

Similarly, I find that the Landlord has failed to prove her claim for outstanding rent. In her handwritten documents submitted in evidence she writes that the Tenant owed rent from January of 2013. The Landlord claimed she issued rent receipts for the times he paid, yet failed to submit these receipts in evidence. Again, there was insufficient evidence to show that she had demanded payment prior to filing her application; most notably, at no time did she issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 47 of the *Residential Tenancy Act*. It belies understanding that she would allow such a debt to accumulate and only pursue repayment when the tenancy ended.

That being said, I do accept that the Tenant failed to pay rent for the final month of his tenancy. He conceded this in the hearing. Accordingly, I award the Landlord **\$600.00** for unpaid rent for the month of September 2015.

I will now turn to the Landlord's claim for compensation for damage to the rental unit.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the Act as follows:

**Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

The Landlord claims the Tenant damaged the rental unit. The Tenant, and his witnesses, testified that the damages alleged either existed at the start of the tenancy (broken window and damage to wall) or were caused by others (broken window, damaged sewer cover).

Neither a move in, nor move out condition inspection report was prepared in accordance with the *Residential Tenancy Act*, or *Residential Tenancy Regulation*. These are important documents which are completed by the parties *together*, and provide evidence of the condition of the rental at the start and end of a tenancy. Further, pursuant to section 21 of the *Regulation*, these reports are afforded considerable evidentiary value. For greater clarity I reproduce that section as follows:

**Evidentiary weight of a condition inspection report**

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Neither party submitted photos of the rental unit at the start of the tenancy. Accordingly, and without such photos or a move in condition inspection report, the only evidence I have as to the condition of the rental at the start of the tenancy is the testimony of the parties and their witnesses.

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.

I find, based on the evidence before me that the Landlord has failed to prove that the Tenant damaged the sewer cover. The Tenant's witness testified that approximately one month prior to the end of the tenancy persons employed by the Landlord ran over the cover while mowing the lawn. The photos submitted in evidence by the Landlord are consistent with such action. In all the circumstances, I find the Landlord has submitted insufficient evidence to prove the Tenant caused damage to the sewer cover.

Similarly, I find the Landlord has failed to prove the Tenant damaged a window or the wall.

The Tenant and his witnesses conceded that they left behind garbage when the Tenant moved out of the rental unit. They say the Landlord told them to leave the garbage where it was and that they would dispose of it for the Tenant. This is incongruous with the fact that the Landlord called the police on the Tenant on the date he moved from the rental unit. The photos submitted by the Landlord confirm the Tenant left a substantial amount of garbage. I do not



accept the evidence of the Tenant and his witnesses that only garbage bags were left behind. In this regard I prefer the evidence of the Landlord and as such award her recovery of the **\$25.00** claimed.

As the Landlord has been partially successful, I award her recovery of one half of the \$100.00 filing fee in the amount of **\$50.00**.

In summary I award the Landlord the following:

Unpaid rent for September 2014	\$600.00
Cost to dispute of Tenant's waste	\$25.00
One half of filing fee	\$50.00
<b>TOTAL CLAIMED</b>	<b>\$675.00</b>

I authorize the Landlord to retain the Tenant's \$300.00 security deposit in partial satisfaction of the amount awarded and grant the Landlord a Monetary Order in the amount of **\$375.00** for the balance due. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

#### Conclusion

The Landlord is granted a Monetary Order for \$375.00 and may retain the Tenant's security deposit for unpaid rent for September 2014, the cost to dispose of the Tenant's garbage and recovery of one half of the filing fee.

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: October 20, 2016

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Residential Tenancy Branch