



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MND, MNR, MNSD, MNDC

### Introduction

This is an application brought by the Landlord requesting a monetary order in the amount of \$13,987.37, requesting recovery of the \$100.00 filing fee, and requesting an order to retain the full security/pet deposits towards the claim.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

Both parties were affirmed.

### Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondents, and if so in what amount.

### Background and Evidence

This tenancy began on July 1, 2015 as a fixed term tenancy with an expiry date of June 30, 2017.

The monthly rent was \$2800.00, due on the first of each month, and the tenants paid a security deposit of \$1400.00 and a pet deposit of \$1400.00, at the beginning of the tenancy.

No move-in inspection report was done at the beginning of the tenancy; however the landlord testified that this was a brand-new unit and therefore no inspection was required.

The landlord testified that he discovered in February of 2016 that the tenants had vacated the rental unit, without giving any written notice whatsoever. He further stated that he did not attempt to re-rent the unit because since he had not received any notice of the tenants were vacating, it was his belief that they had the right to move back into the rental unit.

The landlord further testified that he did not get any written notice from the tenants until May 20, 2016, in a letter dated May 12, 2016, and as a result he was unable to re-rent the unit for the month of June 2016 as well.

The landlord is therefore requesting an order for the loss rental revenue for the months of February 2016 through June 2016.

The landlord further testified that the tenants failed to pay both the natural gas utility and the Hydro utility and therefore he is requesting an order for utilities outstanding for the months of December 2015 through May of 2016.

The landlord further testified that, at the end of the tenancy, it was found that one of the cables to the garage door was off and the spring had to be re-tightened.

The landlord further testified that the tenant left the carpets in the rental unit in need of cleaning, due to the fact that the tenants had a pet, and therefore he had to have the carpets professionally cleaned.

The landlord further testified that the rental unit itself was left in need of significant cleaning, and therefore the whole house had to be professionally cleaned.

The landlord also testified that the tenant left damaged beds and damaged tables at the end of the tenancy and they had to be replaced.

The landlord also testified that the tenants destroyed two shower curtains and shower rods and they too had to be replaced.

Landlord further testified that at the end of the tenancy they found that the glass tray and rollers out of the microwave oven were missing and as a result they had to be replaced.

The landlord further testified that the hardwood floors and the back door in the rental unit were also damaged during the tenancy and will have to be repaired.

The landlord further testified that the tenant left the garden of the rental unit in very poor condition, with a large amount of cigarette butts, bottles, and garbage in the garden that had to be cleaned up.

The landlord is therefore requesting a monetary order as follows:

February 2016 lost rental revenue	\$2800.00
March 2016 lost rental revenue	\$2800.00
April 2016 lost rental revenue	\$2800.00
May 2016 lost rental revenue	\$2800.00
June 2016 lost rental revenue	\$2800.00
Natural gas bill	\$138.64
Hydro Bill	\$523.80
Garage door repair	\$125.00
Carpet cleaning	\$280.00
General house cleaning	\$260.00
Damage bed	\$668.00
Damaged tables	\$19.98
Replace shower curtains and rods	\$72.36
Replace microwave tray and roller	\$55.90
Estimated cost to repair hardwood and door	\$400.00
Cleaning out the garden	\$106.50
Filing fee	\$100.00
Total	\$16750.18

The tenant testified that the landlord was fully aware of the fact that he was moving out of the end of January 2016, as he discussed the matter with the landlord. The landlord had promised that he could park in front of the rental unit and he was unable to do so and therefore after speaking with the landlord it was agreed that he would move out.

The tenant also testified that he always paid his utilities to the landlord in cash however the landlord refused to ever give him any receipts for money paid for rent or utilities. He does not believe he owes any money for outstanding utilities.

The tenant also testified that the garage door broke under normal use, and therefore he believes the landlord is responsible for repairing that door, as the damage was not caused by the them.

The tenant testified that he did not clean the carpets; however it was because the landlord would not allow him to clean the carpets, or do any further cleaning in the rental unit, stating that he would do it himself. The rental unit itself was well cleaned when they moved out as he had numerous friends assisting him with the cleaning.

The tenant testified that the furniture in the rental unit was older used furniture when he moved into the unit and he fails to see how he can be held responsible for any damage to that older furniture. He further states he left the furniture in the same condition in which he received it, pointing out that the landlord did no move-in inspection report, and had he done so it would have shown the poor condition of the furniture in the rental unit, before they moved in.

The tenant also testified that he caused no damage to the shower curtains or shower rods in the rental property, and again states that they were left in the same condition in which they were found at the beginning of the tenancy.

The tenant also denies taking any parts out of the microwave oven, and as stated before, since no move-in inspection report was done there is no way to show whether those parts were there when he moved into the rental unit. He knows of no parts missing from the microwave oven.

The tenant also testified that he did no damage to the floors in the rental property nor did he damaged the door in the rental property, and states that the rental property was left in the same condition as it was when he moved in, other than what would be considered normal wear and tear.

The tenant also states that the garden that the rental property was thoroughly cleaned at the end of the tenancy and he denies leaving a large amount of cigarette butts and garbage in the garden of the rental property.

The tenant therefore believes that this full claim should be dismissed and his full security deposit and pet deposit should be returned.

In response to the tenant's testimony the landlord reiterated that the rental unit was brand-new when the tenants moved in, and therefore none of these damages claimed

by the tenant could have been present at that time, and therefore all the damages had to have occurred during the tenancy.

The landlord further testified that the tenant did not inform him that he would be moving out at the end of January 2016, and he did not become aware that the tenants had vacated until February 2016, after they had already vacated and that's why no moveout inspection was ever done.

The landlord further stated that the photo evidence provided clearly shows the damage caused during the tenancy and requests that the full amount claimed be allowed.

### Analysis

The landlord is requesting a monetary order for lost rental revenue claiming that the tenant breached a fixed term tenancy agreement and moved without notice; however section 7(2) of the Residential Tenancy Act states:

7(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.

In this case however the landlord testified that he did not attempt to re-rent the unit even though, as of February 2016, he was aware of the fact that the tenants had moved out, claiming that he did not want to do so as he had not received any written Notice to End Tenancy from the tenants and therefore thought the tenants may still move back in, however Section 44(d) of the Residential Tenancy Act states:

**44** (1) A tenancy ends only if one or more of the following applies:

(d) the tenant vacates or abandons the rental unit;

Therefore, even if the landlord did not get written notice to end the tenancy, once the tenants vacated or abandoned the rental unit the tenancy ended, and at that point the landlord was required to do whatever is reasonable to minimize his loss.

It is my decision that the by failing to attempt to re-rent the unit the landlord did not take reasonable steps to minimize his loss and therefore, I will not allow the full amount claimed for lost rental revenue.

The tenant claims that he had inform the landlord that he was moving out of the rental unit; however it's my finding that the tenant has not met the burden of proving that claim, and therefore I will allow the landlords claim for lost rental revenue for the month of February 2016 as I find it very unlikely that the landlord could have re-rented it in the month of February 2016.

I will not allow the landlords claim for the natural gas utility or the Hydro utility bills as the landlord has provided no ledger to show what, if any, payments have been made towards utilities, and since the tenant claims to have paid all a Hydro utility bills by cash it's my finding that the landlord has provided insufficient evidence to show that there are any utility bills outstanding.

I will allow the landlords claims for house cleaning, carpet cleaning and the yard cleaning, because the landlord has provided photo evidence that clearly shows that this rental unit was left in need of significant cleaning, and I do not accept the tenants testimony that the rental unit was left clean, or that the landlord would not allow him to clean, as I find that very unlikely.

I will not however allow the landlords claims for damages to the rental unit, because, although the landlord claims a rental unit was in new condition when the tenants moved in, in the absence of any move-in inspection report, there is insufficient evidence to support that claim, and the tenant denies causing any damage to the rental unit, claiming all the damages existed when he moved into the rental unit or were the result of normal wear and tear.

Therefore the total amount of the landlords claim that I have allowed is as follows:

February 2016 lost rental revenue	\$2800.00
Carpet cleaning	\$280.00
General cleaning	\$260.00
Garden cleanup	\$106.05
Filing fee	\$100.00
Total	\$3546.05

### Conclusion

Pursuant to sections 67 and 72 of the Residential Tenancy Act I have allowed \$3546.05 of the applicants claim, and I therefore Order pursuant to section 38 of the Residential Tenancy Act that the landlord may retain the full security and pet deposits totaling \$2800.00 towards the claim, and I have issued a Monetary Order for the respondents to pay \$746.05 to the landlord.

The remainder of the landlords claim is dismissed without leave to reapply.

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: November 22, 2016

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Residential Tenancy Branch