



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (the "Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' 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 tenants pursuant to section 72.

Tenant ID, Tenant JG and the landlord's agent (the "landlord") attended the hearing. Each were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

On May 4, 2016, the landlord was granted an order for substituted service. Specifically the landlord was ordered to serve Tenant ID the application for dispute resolution, with supporting documents and written evidence, along with a copy of the substituted service decision, both to Tenant ID's email address and to Tenant ID's place of employment.

Tenant ID confirmed receipt of the landlord's application for dispute resolution package and subsequent evidence package in the manner described above. In accordance with section 71 of the *Act*, I find that Tenant ID was sufficiently served for the purposes of the *Act*. Tenant ID confirmed he did not provide any documentary evidence for this hearing.

### Preliminary Issue – Service of Landlord's Application to Tenant JG

Although Tenant JG was named in the landlord's application for substituted service, the Arbitrator in the ex-parte proceeding found no evidence to support an application for substituted service to Tenant JG. Therefor the order for substituted service was granted only with respect to Tenant ID.

Tenant JG denied receipt of an application or any documentary evidence from the landlord. The landlord acknowledged he did not forward the application or any documentary evidence to

Tenant JG. For these reasons, I find Tenant JG was not served the application for dispute resolution or evidentiary documents in accordance with the *Act*.

Tenant JG confirmed she did not provide any documentary evidence for this hearing.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenants?

#### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on August 1, 2015 on a fixed term until July 31, 2016. Rent in the amount of \$1,800.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$900.00 at the start of the tenancy.

Tenant ID provided written notice to the landlord on March 31, 2016 that the tenants would vacate the rental unit by April 30, 2016. Tenant ID advertised the rental unit and conducted showings. The tenants vacated the rental unit on April 29, 2016 and the rental unit was re-rented effective May 1, 2016.

Written condition inspection reports were conducted on July 31, 2015 at move-in and on April 29, 2016, at move-out. The landlord submitted a copy of both reports, which are each signed by the landlord and Tenant ID. The April 29, 2016 report indicates the tenants are responsible for the cost of cleaning the rental unit and replacement of a missing shelf. The report does not indicate a monetary amount agreed to by the parties for the damage.

The landlord testified that he is seeking \$2,153.66 in damages, including the following:

#### *Filing fee*

The landlord seeks to recover the \$100.00 filing fee paid for this application from the tenants.

#### *Cleaning*

It is the landlord's position that the rental unit was not adequately cleaned upon vacancy and as per the signed condition inspection report dated April 29, 2016 Tenant ID agreed to be responsible for cleaning charges. The landlord submitted a copy of a receipt in the amount of \$200.00. The landlord also submitted photographs depicting the condition of the rental unit at the end of the tenancy.

*Registered Mail*

The landlord seeks to recover the \$11.34 registered mail costs incurred as a result of this application, from the tenants. The landlord submitted a copy of the registered mail receipt.

*Liquidated Damages*

The landlord contends in signing the tenancy agreement addendum, the tenants agreed their termination of the fixed term tenancy prior to the expiry, would result in liquidated damages. The landlord testified that he did not mutually agree to end the tenancy and as per clause 15 of the signed addendum, once the tenants ended the tenancy prior to the expiry of the fixed term, the tenants became obligated to pay \$100.00 for every month of their tenancy for a total amount of \$900.00. The landlord submitted a copy of the addendum.

*Strata Fees*

The landlord testified that because the tenants failed to notify the strata of their vacancy, the landlord incurred a \$100.00 penalty in the form of a move-out fee that he now seeks to recover from the tenants. The landlord provided a copy of an email confirming receipt of the \$100.00 move-out fee, and a copy of the strata move/out procedures and a copy of a signed document indicating the tenants agreed to abide by all strata bylaws and rules.

*Credit Report*

The landlord testified that in his attempt to secure a new tenancy for the rental unit, he obtained two credit reports at the cost of \$25.66 each. The landlord testified that in accordance with clause 15 of the signed addendum the tenants agreed to be responsible for all costs incurred in re-renting the unit. The landlord provided a copy of a receipt for the credit reports in the total amount of \$51.32.

*Labour for Tenant Replacement*

Although Tenant ID advertised and showed the rental unit, the landlord testified that the landlord was engaged in various "behind the scene" tasks in relation to securing a new tenancy. In particular, the landlord testified that emails, phone calls and credit checks were conducted. The landlord contacted a local property management company and enquired on the cost of a tenancy search and placement. In response to the landlord's enquiry, the property management company advised the landlord they charged \$850.00 or half a month's rent for tenant placement. The landlord seeks \$450.00, a quarter of the monthly rent, in compensation for his role in obtaining a replacement tenant. The landlord provided a copy of the email correspondence between the landlord and property management company.

*Shelf Replacement, Installation and Wall Repair*

The landlord testified that upon the tenants' vacancy he noted a floating shelf from the entrance area was missing and the surrounding wall damaged. The landlord purchased a replacement shelf in the amount of \$27.99 from a local hardware store and seeks to recover this cost from the tenants. The landlord has submitted a copy of this receipt.

The landlord obtained three estimates to install the new shelf and repair the surrounding wall. The landlord submitted a copy of all three estimates. The landlord employed the individual with the lowest estimate and paid \$250.00 for this repair work. The landlord submitted a copy of this receipt. The landlord purchased the paint to be used on the wall in the amount of \$43.01 and seeks to recover this amount from the tenants. In total the landlord seeks \$321.00 for the work conducted to replace and repair the floating shelf and surrounding wall area.

#### *Courier Costs*

The landlord seeks to recover the \$20.00 courier cost incurred as a result of this application, from the tenants. The landlord submitted a copy of various courier costs.

Tenant ID gave affirmed testimony that the landlord added the damages of cleaning and shelf repair to the condition inspection report after he had signed it. Tenant ID testified that he only received a copy of the move-out condition inspection report as part of the landlord's evidence package for this hearing.

#### *Cleaning*

Tenant ID testified that the replacement tenant requested items such as plates and perishables be left behind so at no charge he left these items for her use. Tenant ID testified that he hired a cleaner who conducted the cleaning of the rental unit. Tenant ID acknowledged the rental unit was not perfectly clean and "could have been tidier" upon vacancy.

#### *Liquidated Damages*

Tenant ID testified that because the rental unit was re-rented immediately, the landlord did not lose any rental income. Therefore he finds the landlord's claim to liquidated damages in the amount of \$900.00 excessive.

#### *Strata Fees*

Tenant ID and Tenant JG testified that the furniture they did move out was disassembled and moved out slowly. Therefore it is their argument that the moving of these items was not disruptive and they should not be held liable for a move-out fee.

#### *Credit Report*

Tenant ID testified that he was not subjected to a credit check and questions why he would be held responsible for the payment of credit checks on new tenants.

#### *Labour for Tenant Replacement*

Tenant ID stated he did all "the legwork" in finding and securing a tenant replacement and therefore finds it unnecessary to compensate the landlord.

#### *Shelf Replacement, Installation and Wall Repair*

Tenant ID recalls the landlord telling him at one point that a previous tenant added the floating shelf. Tenant ID indicates this shelf was installed poorly and throughout the tenancy the shelf continually drooped and eventually fell off. Tenant ID testified that he advised the landlord of the shelf issue at which time the landlord replied that he would take care of it when the tenants vacated. In an effort to tidy the wall area of the now broken shelf, tenant ID placed some white tape on the wall. Tenant ID finds the \$250.00 labour cost excessive and questions the validity of the receipt.

### Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Section 37 of the *Act*, establishes that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

### *Cleaning*

I find the tenants breached the *Act*, when they failed to clean the rental unit in its entirety. The photographs support the landlord's claim that the tenants left some portions of the rental unit dirty and tenant ID does not dispute this. Based on the submitted receipt I find the landlord is entitled to \$200.00 for cleaning.

### *Liquidated Damages*

Based on the testimony of the parties and submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on July 31, 2016. Although Tenant ID provided written notice of the tenants' intent to end the tenancy on March 30, 2016, the tenants ended the tenancy earlier than the date specified in the fixed term tenancy agreement, which is not in compliance with section 45 of the *Act*.

Because the tenants ended the tenancy contrary to the *Act*, and the parties signed an agreement that included a liquidated damage clause, the tenants may be held liable for the amount stipulated in that clause.

However, in order to enforce a liquidated damage clause in a tenancy agreement or addendum, it must first be determined whether the clause is valid. Specifically it must be determined whether the amount agreed to is a genuine pre-estimate of the loss at the time the contract was entered into or a whether the amount constitutes a penalty.

The landlord has not provided sufficient information to demonstrate that the liquidated damage clause contained in this tenancy agreement is linked to any genuine pre-estimate of the loss that would be incurred should the tenants fail to abide by the terms of the tenancy agreement. In fact, the clause contained in this tenancy agreement provides the landlord with a greater liquidated damage entitlement as the tenants near their total completion of their tenancy. I find that the liquidated damage clause in this addendum constitutes a penalty. For this reason, I dismiss this portion of the landlord's monetary claim.

#### *Strata Fees*

Based on the documentary evidence submitted by the landlord, I find that the strata bylaws and rules formed part of the tenancy and that the strata rules include obligatory notification of a move-out and payment of a move-out fee in the amount of \$100.00. The landlord established by way of a confirmation email, that he paid the \$100.00 move-out fee. For these reasons, I find the landlord is entitled to recover the \$100.00 strata move-out fee from the tenants.

#### *Credit Report*

In accordance with clause 15 of the signed addendum, I find the tenants agreed to be responsible for all costs incurred in re-renting the unit, which in this case would include credit reports. For this reason I find the landlord is entitled to recover \$51.32 for credit reports.

#### *Labour for Tenant Replacement*

I find the landlord has provided insufficient evidence to establish his entitlement to \$450.00 for his role in re-renting the rental unit. The landlord provided a copy of email correspondence between himself and a property management company regarding re-rental fees however the landlord did not utilize this property management company or incur their fees. Based on the testimony of the parties, the tenant advertised and showed the rental unit. Although the landlord testified that he was involved in various tasks in re-renting the unit, he has failed to provide a copy of the emails or a record of the phone calls made in relation to re-renting the rental unit. In regards to the credit checks, the landlord has already been awarded compensation. For the reasons stated above, I dismiss the landlord's monetary claim of \$450.00.

#### *Shelf Replacement, Installation and Wall Repair*

The onus is on the landlord to prove the missing shelf and damage to the wall is a result of deliberate action or neglect of the tenants. Based on the undisputed testimony of the parties, I find the shelf was not left within the rental unit and therefore award the landlord the cost of the replacement shelf in the amount of \$27.99.

I find the landlord has provided insufficient evidence to establish the shelf became detached due to a deliberate action of the tenants or neglect on their part. Contrary to this, I find it probable, that with reasonable use, the shelf detached from the wall over time. The landlord did not dispute that Tenant ID had contacted him previously with a report of the detached shelf, therefore I find that the tenants were not negligent but acted accordingly by contacting the

landlord. In summary, I find it probable that the shelf detached as a result of reasonable wear and tear and dismiss the landlord's claim for \$250.00 in repair work and \$43.01 in paint.

#### *Registered Mail & Courier Costs*

I dismiss the landlord's claim of \$11.34 for the registered mail and \$20.00 for the courier used for this hearing process, as the only hearing-related costs recoverable under section 72 of the *Act* are for filing fees.

#### *Filing Fee*

As the landlord was partially successful in this application, I find that the landlord is entitled to recover \$50.00 of the \$100.00 filing fee for a total award of \$429.31.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$429.31 of the \$900.00 security deposit in full satisfaction of the monetary award. The tenant is entitled to the remaining \$470.69 security deposit balance.

#### Conclusion

Item	Amount
Filing Fee	\$50.00
Cleaning	\$200.00
Strata Fees	\$100.00
Credit Report	\$51.32
Shelf	\$27.99
Less Security Deposit	-900.00
<b>Total Monetary Order</b>	<b>-\$470.69</b>

The landlord is entitled to \$429.31. I order the landlord to retain \$429.31 from the security deposit in full compensation of this amount. The tenants are entitled to the return of the balance of the security deposit. I therefore grant the tenants a monetary order for the balance of the deposit, in the amount of \$470.69. The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the landlord's claim against Tenant JG without leave to reapply, as a final and binding decision has been made with respect to the landlord's claim arising out of this tenancy.

The remainder of the landlord's application for a monetary order 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: December 12, 2016

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Residential Tenancy Branch