



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MANN TESTING LABORATORIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND MNR MNSD FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (the "Application") seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for authorization to keep all or part of the security deposit and pet damage deposit, and to recover the cost of the filing fee.

On November 29, 2016 the agent for the named landlord company, B.M. (the "landlord"), landlord's counsel, and the tenant appeared at the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and documentary evidence is provided below and includes only that which is relevant to the hearing. After 65 minutes, the hearing was adjourned to allow additional time to consider evidence. An Interim Decision dated November 30, 2016 was issued which should be read in conjunction with this decision. On January 12, 2017 the hearing reconvened and after an additional 65 minutes of testimony the hearing was concluded.

In the Interim Decision, I found that J.M. was not a tenant as J.M. did not pay rent to the landlord and was not named on the tenancy agreement. As a result, J.M. was removed from the Application.

The tenant confirmed that he was served with the landlord's documentary evidence and had the opportunity to review that evidence prior to the hearing. The tenant also confirmed that he did not serve the landlord with documentary evidence in response to the landlord's Application. Neither party raised concerns regarding the service of documentary evidence.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit and pet damage deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement began on February 15, 2015 and was scheduled to revert to a month to month tenancy after February 15, 2017. Monthly rent in the amount of \$1,650.00 was due on the first day of each month. The tenant paid a security deposit of \$825.00 and a pet damage deposit of \$825.00 at the start of the tenancy which the landlord continues to hold, which has accrued \$0.00 in interest to date.

The tenancy ended on April 1, 2016. The tenant claimed that he emailed the landlord on January 22, 2016 that he would be vacating the rental unit effective January 31, 2016. The landlord denied that there was any arrangement for the tenant to vacate early and end the tenancy on January 31, 2016. The landlord testified that as far as he knew the tenant continued to have occupancy of the rental unit as he never returned the rental unit keys that the landlord did not obtain occupancy of the rental unit until April 1, 2016.

The landlord has claimed for \$16,184.70 comprised of the following:

Item #	Description	Amount
1	Rental inspections	\$467.25
2	Carpet cleaning	\$184.80
3	Replacing locks	\$305.00
4	Supply and install floors	\$1,641.15
5	Misc. repairs	\$4,042.50
6	Unpaid rent from January 2016 to May 2016	\$9,400.00
7	NSF charge for unpaid rent	\$35.00
8	RCMP charge	\$109.00
<b>TOTAL</b>		<b>\$16,184.70</b>

Item #1 is for \$487.25 for rental inspections that the landlord describes as a walkthrough of damage throughout the rental unit. The person who completed the inspections, J.G. was called as a witness during the hearing. This item, however, is dismissed in full without leave to reapply as there is no remedy for a cost related to what I find to be an agent for the landlord as the landlord made the choice to hire someone to do the inspections on behalf of the landlord instead of performing the inspections himself. In other words, both an incoming and outgoing condition inspection is required under section 23 and 35 of the *Act* and as a result, the tenant is not liable for those charges as the landlord must complete both inspections as a part of every tenancy. Therefore, this item is dismissed as I find the amount claimed is a cost of doing business as a landlord.

Item #2 is for \$184.80 for carpet cleaning which includes taxes. The agent testified that the tenant left the rental unit carpets in dirty condition. The landlord submitted a carpet cleaning invoice and a copy of a cheque made out for the full amount in evidence which supports that the landlord suffered a loss of \$184.80 to have the carpets cleaned in the rental unit. The condition inspection report submitted in evidence supports that the carpets needing cleaning at the end of the tenancy. The landlord testified that the carpet cleaning was ultimately unsuccessful as the carpets were too soiled and the flooring was changed as a result of the unsuccessful cleaning. The tenant's response was that he had nothing to do with this and that he had no knowledge of how the damage was done as he moved out January 31, 2016.

Item # 3 is for \$305.00 to replace the locks of the rental unit as according to the landlord the keys to the rental unit were not returned. The landlord submitted in evidence an invoice in the amount of \$305.00 and a copy of a cheque made out for the full amount in support that the landlord suffered a loss of \$305.00 to replace the locks of the rental unit after the rental unit was vacated. The tenant's response was that he disagrees he was a tenant at the time the locks were changed and that he is not responsible as a result.

Item #4 is for \$1,641.15 to supply and replace the floors that were damaged by the tenant or occupants permitted in the rental unit by the tenant during the tenancy according to the landlord. Submitted in evidence were a copy of the condition inspection report, invoice in the amount of \$1,641.15 and a copy of a cheque made out for the full amount of this portion of the landlord's claim. The landlord testified that the rental unit was new at the start of the tenancy and that the carpets and laminate flooring were all new at the start of the tenancy. The tenant responded by testifying that when he moved in there were some problems but nothing too serious such the flooring not joining together perfectly in places but that on January 31, 2016 when he moved the flooring didn't need to be replaced in his opinion, only some laminate pieces or "planks".

The landlord stated that the rental unit was new at the start of the tenancy and that a National Home Warranty was in place and that a National Home Warranty would not be approved without a full inspection of the home when it is finished and before it is rented. The landlord clarified that the laminate flooring was a “floating” floor and that the minor movement is normal but that the quality of work was good and that the problems were due to water damage by the tenant and that they had to remove all the flooring as there was a large amount of damage and the new pieces would not match the flooring colour or the thickness as the same flooring was not available at the time the repairs were required.

The tenant added a supplemental response that he felt that the flooring was a case of bad workmanship and that the landlord is stretching this a little bit that the flooring had to be replaced.

Item #5 is for \$4,042.50 for miscellaneous repairs that the landlord clarified was originally listed as “renovations” in error, and meant to write “repairs” due to the damage to the rental unit during the tenancy as the rental unit was new at the start of the tenancy. The landlord testified that he hired a contractor to remove the damaged carpet and laminate flooring and to install the new flooring, install molding on the baseboards, repair drywall, repair cabinets, paint and clean after the repairs for a total cost of \$4,042.50 which the landlord stated is supported by the invoice submitted in evidence. The landlord also referred to the condition inspection report in support of this portion of the monetary claim and the photographic evidence submitted in evidence. The tenant’s response was that when he moved out on January 31, 2016 those items were not damaged.

Item #6 is for \$9,400.00 for unpaid rent and loss of rent according to the landlord as follows:

Month	Amount Paid	Amount Claimed
December 2015 rent of \$1,650.00	\$500.00	\$1,150.00
January 2016 rent of \$1,650.00	\$0.00	\$1,650.00
February 2016 rent of \$1,650.00	\$0.00	\$1,650.00
March 2016 rent of \$1,650.00	\$0.00	\$1,650.00

April 2016 rent of \$1,650.00	\$0.00	\$1,650.00
Loss of May 2016 rent of \$1,650.00	\$0.00	\$1,650.00
<b>TOTAL</b>		<b>\$9,400.00</b>

The tenant confirmed that he paid \$500.00 of the \$1,650.00 December 2015 rent as claimed by the landlord and that he would owe January 2016 rent in full as he did not provide sufficient notice however the landlord reiterated that he disagrees that there was any arrangement that supported that the tenant was leaving the tenancy early. The tenant confirmed that he did not submit any emails in support that there was an agreement that the tenant would be ending the tenancy early.

The landlord stated that due to the large amount of damage in the rental unit, the landlord was unable to rent the rental unit in May 2016 which is why he has claimed for loss of May 2016 rent.

Regarding item #7, the landlord has claimed an non-sufficient funds ("NSF") fee in the amount of \$35.00 which the tenant did not provide comment on during the hearing.

Regarding item #8, the landlord has claimed \$109.00 related to RCMP charges however confirmed that he did not submit an invoice from the RCMP or other documentary evidence to support this portion of the landlord's monetary claim. As a result, this item was dismissed without leave to reapply during the hearing due to insufficient evidence to support this portion of the landlord's monetary claim.

The tenant testified that it was never his intention to be the sole lease holder in the tenancy agreement. Later in the hearing, the tenant confirmed that he did breach the lease as he could not afford to live there. The landlord testified that he never accepted any other occupants as tenants and only was renting the rental unit to the tenant and did not receive occupancy of the rental unit back until April 1, 2016.

### Analysis

Based on the documentary evidence and the testimony of the parties, and on the balance of probabilities, I find the following.

Firstly, I find that the tenant was a tenant for the entire tenancy which ended on April 1, 2016. I disagree with the tenant's assertion that he could not do anything about those residing in the rental unit after he alleges to have vacated the rental unit on January 31,

2016. The tenant was the only tenant listed on the tenancy agreement and pursuant to the *Act* is responsible for all damages to the rental unit and that occupants have no rights or obligations under the *Act* as they are not tenants under the *Act*. As a result, I find the tenant was responsible for ensuring all occupants vacated the rental unit if in fact the tenant did vacate the rental unit on January 31, 2016. I further find that when the tenant permitted occupants to continue to reside in the rental unit, that the tenant was responsible for all damages and the actions of the occupants until the tenancy ended on April 1, 2016. For example, the tenant could have contacted the police to have unauthorized occupants removed from the rental unit once the tenant claims to have given notice to the landlord. The tenant provided no evidence of such during the hearing.

Having made the above finding, I will now analyze each of the landlord's items.

**Item #1** – As indicated above, this item was dismissed during the hearing as I find the tenant is not responsible for the decision of the landlord to hire an agent to perform the required condition inspection during the tenancy. This portion of the landlord's claim does not meet the burden of proof and is dismissed due to insufficient evidence.

**Item #2** – Section 37 of the *Act* applies and states:

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

**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.

[my emphasis added]

Based on the above and the evidence before me, I find the tenant breached section 37 of the *Act* by failing to clean the rental unit carpets and leaving them damaged. Therefore, I find the landlord has met the burden of proof having considered the photographic evidence and the condition inspection report and the invoice and cheque

made out for \$184.80 for carpet cleaning which includes taxes. I grant the landlord the full amount claimed of **\$184.80** for this portion of their claim as a result.

**Item # 3** – I accept the undisputed testimony that keys for the rental unit were not returned to the landlord and find the tenant breached section 37(2)(b) of the *Act* which requires the tenant to return all keys to the landlord at the end of the tenancy. I have reviewed the invoice and copy of the cheque and find that the landlord has met the burden of proof and that the landlord is entitled to the full amount of **\$305.00** as claimed for this portion of the landlord's monetary claim.

**Item #4** – Based on the evidence before me and as indicated above, I find the tenant is liable for all damage to the rental unit as the fact that the rental unit was new at the start of the tenancy was not disputed by the tenant. I am satisfied based on the testimony of the landlord, condition inspection report, photographic evidence and the invoice that the landlord suffered a loss of \$1,641.15 to supply and replace the floors that were damaged by the tenant or occupants permitted in the rental unit by the tenant during the tenancy. I afford no weight to the tenant's testimony that the flooring had a workmanship issue due to insufficient evidence from the tenant. Given the above, I find the landlord has met the burden of proof and grant the landlord **\$1,641.15** as claimed for this portion of the landlord's monetary claim.

**Item #5** - Consistent with item #4 above, and having considered the testimony of the landlord, condition inspection report, photographic evidence and the invoice that the landlord suffered a loss of \$4,042.50 to hire a contractor to remove the damaged rental unit carpet and laminate flooring, to install the new flooring, install molding on the baseboards, repair drywall, repair cabinets, paint and clean after the repairs. Given the above, I find the landlord has met the burden of proof and grant the landlord **\$4,042.50** as claimed for this portion of the landlord's monetary claim.

**Item #6** – For this item and having considered the testimony of the parties I find that the tenant has breached section 26 of the *Act* which states:

**Rules about payment and non-payment of rent**

**26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.**

[my emphasis added]

In reaching this conclusion I have taking into account that the tenant confirmed that he owes \$1,150.00 in unpaid rent for December 2015 and \$1,650.00 for January 2016 unpaid rent, and further to my finding above that the tenant is liable for the occupants that remained in the rental unit until April 1, 2016 without any rent being paid to the landlord. I also find that the tenant has failed to provide evidence that he had any right under the *Act* not to pay rent as claimed by the landlord. Therefore, I prefer the testimony of the landlord over that of the tenant for this portion of the landlord's monetary claim and I find the landlord has met the burden of proof. As a result, I grant the landlord the full amount of **\$9,400.00** in unpaid rent and loss of rent as claimed.

**Item #7** – As the tenant did not dispute providing a cheque to the landlord that was returned as NSF, I find the landlord has met the burden of proof and I grant the landlord **\$35.00** for this portion of the landlord's monetary claim.

**Item #8** – As indicated above, as the landlord failed to submit an invoice from the RCMP or other documentary evidence to support this portion of the landlord's monetary claim, this item was dismissed without leave to reapply during the hearing due to insufficient evidence, without leave to reapply.

As the landlord's application had merit, **I grant** the landlord the recovery of filing fee in the amount of **\$100.00**.

The landlord continues to hold the tenant's security deposit \$825.00 and pet damage deposit of \$825.00 which has accrued \$0.00 since the start of the tenancy.

**Monetary Order** – **I find** that the landlord has established a total monetary claim in the amount of **\$15,708.45** and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit and pet damage deposit as follows:

Item #	Description	Amount Granted
1	Rental inspections	dismissed
2	Carpet cleaning	\$184.80
3	Replacing locks	\$305.00
4	Supply and install floors	\$1,641.15
5	Misc. repairs	\$4,042.50
6	Unpaid rent and loss of rent – December 2015 to May 2016 inclusive	\$9,400.00
7	NSF charge for unpaid rent	\$35.00



8	RCMP charge	dismissed
9	Recovery of cost of the filing fee	\$100.00
<b>SUB-TOTAL</b>		<b>\$15,708.45</b>
<i>(Less tenant's security deposit of \$825.00 and pet damage deposit of \$825.00)</i>		<i>-\$1,650.00</i>
<b>TOTAL AMOUNT OWING BY THE TENANT TO THE LANDLORD</b>		<b>\$14,058.45</b>

Pursuant to section 72 of the *Act*, **I authorize** the landlord to retain the tenant's full security deposit of \$825.00 and full pet damage deposit of \$825.00 in partial satisfaction of the landlord's claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$14,058.45**.

#### Conclusion

The landlord's application is mostly successful.

The landlord has established a total monetary claim of \$15,708.45. The landlord has been authorized to retain the tenant's full security deposit of \$825.00 and full pet damage deposit of \$825.00 in partial satisfaction of their claim. The landlord has been granted a monetary order under section 67 for the balance due in the amount of \$14,058.45. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: January 30, 2017

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Residential Tenancy Branch