



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding THE JACOB  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FF, MND, MNDC, MNR

### Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenants acknowledged receipt of evidence submitted by the landlord, the tenants did not submit any documentation for this hearing. Both parties gave affirmed testimony.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background, Evidence

The landlord's testimony is as follows. The tenancy began on March 1, 2015 and ended on April 15, 2016. The tenants were obligated to pay \$2200.00 per month in rent in advance and on the first of each month. The landlord testified that the tenants caused damage to the unit and that they should pay for it. The landlord testified that the tenants owe him late fees for continuous late rental payments. The landlord seeks to recover all his costs for cleaning, repairs, parts, labour, utilities, loss of rent and late fees.

The landlord is applying for the following:

1.	Late Fees and hassle for late payments	360.00
----	--	--------

2.	Laminate flooring	540.00
3.	Garbage removal and light bulb replacement	90.00
4.	Garbage removal from driveway	60.00
5.	Install shower door	154.00
6.	Repair Damaged Deck	400.00
7.	Illegal advertising, copyright infringement	2400.00
8.	Utilities	789.44
9.	Repairs after April 15, 2016	3213.14
10.	Filing fee	100.00
	Total	<b>\$8106.58</b>

The tenants gave the following testimony. The tenants testified that they agree that they are responsible for the utilities and for a late fee of \$25.00 as per the Act, not the \$45.00 the landlord is seeking. The tenants testified that they are filing their own application for an illegal eviction. The tenants testified that the landlord was given an order of possession by the Branch with an effective date of April 30, 2016. The tenants testified that when they went away for an overnight trip on April 15, 2016, the landlord illegally changed the locks and threw all of their possessions away. The tenants testified that they were never given an opportunity to go back into the unit to retrieve their belongings or participate in the condition inspection report. The tenants testified that they have not seen many of the damages that the landlord is seeking compensation for as they were locked out and weren't able to get into the unit to clean, repair, inspect, and mitigate.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below. It was very clear to me that the relationship between the two parties is an acrimonious one. Each party alleged that the other was not being truthful several times during the hearing.

I address the landlords' claims and my findings as follows.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove

the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. **In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.**

### Late Fees

The landlord is seeking NSF/ late fees in the amount of \$45.00 x 4 times = \$180.00 and \$45.00 x 4 times = \$180.00 for the hassle of having to deal with it for a total of \$360.00. The tenants dispute this claim. The tenants testified that they always paid their rent in cash so there weren't any NSF fees. The tenants testified that the landlord did not enforce the late fee except for one time for February 2016. The tenants acknowledge that they are responsible for one late fee but it should only be for \$25.00.

Section 7 of the Residential Tenancy Regulation addresses these issues as follows  
**Non-refundable fees charged by landlord**

**7** (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

Based on the documentary evidence before me I find that the landlord is entitled to \$25.00 for each incident, not the \$45.00 dollars as claimed for an award of \$100.00. As for the "hassle" of dealing with it, I find that the late fee justly and reasonably compensates the landlord and I therefore dismiss his request of \$180.00 for the "hassle" of dealing with it.

### Laminate flooring

The landlord testified that the tenants denied him access to install some laminate flooring and that they should be responsible for the amount it would have cost to install it; \$540.00. The tenants dispute this claim. The tenants testified that the landlord had not arranged to conduct this work with them and that it was going to be difficult since they were just moving in. The tenants testified that if the landlord had worked and cooperated with them they would have made arrangements to assist.

The landlord has not incurred any out of pocket costs for this claim and has not provided sufficient evidence of loss, accordingly; I dismiss this portion of his claim.

Garbage removal and light bulb replacement

The landlord is seeking \$90.00 to remove garbage from the unit and replace lightbulbs on March 3, 2016. The tenants dispute this claim. The tenants testified that the landlord did not have the unit ready for them at move in on March 1, 2016 and that the garbage was left behind by the previous tenants. The tenants testified that many lightbulbs were burnt out and not replaced by the previous tenants. The tenants referred to the landlords own work order dated March 3, 2015 that had numerous issues to address and clearly demonstrates that the unit wasn't ready for the subject tenants. Based on the landlords own documentation, I must dismiss this portion of his claim.

Garbage removal from driveway

The landlord is seeking \$60.00 for garbage removal from the driveway on March 24, 2015. The landlord alleges it belonged to the subject tenants and that he received a complaint from a neighbor that it was a fire hazard. The tenants dispute this claim. The tenants testified that they had no knowledge of this garbage and that the landlord never mentioned it to them. The landlord did not provide sufficient evidence to show that the garbage was put there by the subject tenants. In addition, the landlord never advised the subject tenants so that if it was their garbage, they were not afforded an opportunity to rectify the situation. Based on the insufficient evidence before me and on a balance of probabilities, I dismiss this portion of the landlords claim.

Install Shower Door

The landlord testified that the tenants took off the shower door as soon as they moved in and he had to have it replaced and installed. The landlord is seeking \$154.00 which is half the cost he incurred, taking depreciation into account. The tenants dispute this claim. The tenants testified that the shower door was hanging loosely and that it fell on JH's foot. The tenants took it down as it was a safety hazard and advised the landlord immediately. The tenants testified that this too was listed on the landlords work order of March 2, 2015. I agree with the tenants that the shower door required repairs as per the landlords' documentation. Based on the landlords own documentation, I must dismiss this portion of his claim as this was pre-existing damage.

Repair Damage to the Deck

The landlord testified that he believes the tenants damaged the deck by gouging it and putting small dents in it. The landlord has not repaired this item but believes it will cost “about four hundred dollars to fix it”. The tenants dispute this claim. The tenants testified that they did not damage the deck and that there was pre-existing damage to it. In addition, the tenants testified that they were not given a chance to see it as they were locked out as of April 15, 2016. As the landlord has not incurred any out of pocket costs he has not provided sufficient evidence to show the loss he has incurred. In addition, the landlord has rented the unit for more rent each month so his ability to rent it has not been restricted. Based on the insufficient evidence before me I dismiss this portion of the landlords claim.

Illegal advertising

The landlord is seeking \$2400.00 for loss of rental income as he found an ad on the internet that stated that he was a bad landlord. The landlord alleges the subject tenants’ posted the advertisement. The tenants dispute this claim. The landlord testified that “I think they did it”. Based on the insufficient evidence before me, I dismiss this portion of the landlords claim.

Utilities

The tenants acknowledge and accept responsibility for this claim and agree that the landlord is entitled to \$789.44.

Damages after April 15, 2016

The landlord testified that he believed the subject tenants moved out on April 14, 2016 without notice. The landlord decided to change the locks the following day. The landlord testified the basement tenant of this home called him later that same day and said people were moving around upstairs and making noise. The landlord stated that he told the tenant to call the police since a break and enter was occurring. The landlord testified that he didn’t see who was there personally but was told by the basement tenant it was the subject tenants. The landlord is seeking \$3213.14 for cleaning and repairs.

The tenants adamantly dispute this allegation. The tenants stated that they had not moved out or abandoned the unit and that they were away for an overnight trip. The tenants testified that the landlord was given an order of possession for April 30, 2016 but decided on his own that he would illegally evict them on April 15, 2016. The tenants

testified that they were never given their belongings, and that their vehicles were towed to a scrap yard. The tenants testified that despite numerous requests to allow them in to see if any of their belongings were in the suite, they also wanted to see the damages that the landlord was alleging, but were denied. The tenants testified that they were never given an opportunity to inspect or mitigate. The tenants testified that they asked the landlord several times to conduct the condition inspection report with them, but he refused. The tenants testified that after seeing the documentary and photo evidence of the landlord, they believe he himself caused the damage and is trying to have them pay for it.

The landlord stated that an information officer at the Branch told him that he can change the locks since they didn't give him notice that they were moving out. The landlord stated that under "part 5 of the Act, I can change the locks"; the landlord is incorrect.

Section 31 of the Act addresses this issue as follows:

**Prohibitions on changes to locks and other access**

**31** (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

The tenants testified that they did not authorize or agree to have the locks changed. By changing the locks on April 15, 2016, the landlord denied the tenants' access to the unit that they were entitled to be in and by doing so did not allow the tenants to view the alleged damage and cleaning deficiencies. As the landlord removed the ability for the tenants to view the property and be given a fair opportunity to inspect, agree, disagree or mitigate the damages, I must dismiss this portion of his claim. The landlord provided a detailed and extensive list of items he was seeking compensation for. For absolute clarity, I hereby dismiss the following items the landlord was seeking a monetary award for; items 13-26 on the list he provided titled "Claim Item Details".

- Repair/Replace wall, door and jamb
- Painting all repaired drywall
- Painting 4 doors, 3 bifold doors
- 2 set door lock and installation
- Ceiling light cover, motion detector light and installation
- Ranger oil drip, 1 rectangular container
- Missing two shelvings in garage
- Dumping unwanted items
- Suite cleaning
- Kitchen window aluminum bar
- Missing wood decoration on dining room window
- Downstairs wall near ceiling damaged through from midway of stairwell.

As the landlord has been partially successful in his application he is entitled to the recovery of the \$100.00 filing fee.

#### Conclusion

In summary, the landlord has been successful in the following claims:

Utilities	\$789.44
Late Fee	\$100.00
Filing Fee	\$100.00
	\$
	\$
	\$
<b>Total:</b>	<b>\$989.44</b>

The landlord has established a claim for \$989.44. I grant the landlord an order under section 67 for the balance due of \$989.44. This order may be filed in the Small Claims 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: February 08, 2017

---

Residential Tenancy Branch