



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, DRI, FF

### Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing.

The Landlord applied requesting a monetary order for damage to the unit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; to keep all or part of a pet damage deposit or security deposit; and to recover the cost of the application fee.

The Tenants applied for compensation for damage or loss under the Act, regulations, or tenancy agreement; for the return of the security deposit; to dispute a rent increase, and to recover the cost of the filing fee.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

### Preliminary and Procedural Matters

The parties confirmed that they have exchanged the documentary evidence that I have before me.

### Issues to be Decided

- Is the Landlord entitled to compensation due to damage to the rental unit?
- Can the Landlord keep the security deposit in partial satisfaction of her monetary claim?
- Are the Tenants entitled to the return of double the security deposit?
- Was the Rent increase applied correctly and for an allowable amount?
- Are the Tenants entitled to money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?
- Are the parties entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy commenced in June 2014, at which time the Tenants moved into the basement suite. The Tenants moved into the upper unit suite in December 2014, and initially paid rent in the amount of \$1,600.00 that was due on the first day of each month. The Tenants paid a security deposit of \$450.00 to the Landlord. The tenancy ended on August 31, 2016.

### Landlord's Application

The Landlord is seeking compensation for cleaning and repairs needed to the rental unit after the Tenants moved out.

### Junk Removal \$210.00

The Landlord is seeking \$210.00 for the cost of removing a piano that was left in the garage. The Landlord testified that she hired a company to pick up and dispose of the piano. The Landlord provided a receipt in the amount of \$210.00.

In response, the Tenant testified that it's not a piano but rather an electric organ that she left behind in the rental unit. She testified that the parties discussed the disposal of the organ and the parties agreed they would share the cost of disposal. The Tenant testified that the agreement between the parties was a verbal agreement and that she does not have the agreement in writing.

### Wall Disposal \$175.00

The Landlord testified that the Tenants built a wall between the kitchen and the living room. The Tenants did not deconstruct the wall before they moved out.

The Landlord testified that she hired a person to deconstruct the wall and dispose of the materials. The Landlord provided a receipt for the cost of deconstruction and disposal.

The Tenant testified that the parties discussed the wall at the end of the tenancy and the Landlord agreed that the wall could stay. The Tenant acknowledges that she built the wall and that she left the wall in place at the end of the tenancy.

Window Replacement \$402.85

The Landlord is seeking compensation for the cost of replacing windows on the property. The Landlord replaced the side windows in the shed and also replaced the bathroom window in the rental unit.

The Landlord testified that the Tenants son was with his friend on the property with a BB gun. The Landlord testified that the Tenant is responsible for damage to the window caused by the BB gun.

The Landlord referred to documentary evidence of an email where the Tenant stated that she agreed to pay for the damage to the window. The Landlord provided a receipt for the cost of replacing the windows. The Landlord provided color photographs of the windows.

In response, the Tenant testified that the bathroom window was broken by a bird. She testified that her son does not own a BB gun, but she acknowledged her son has a friend who brought a BB gun onto the property and that they were shooting at targets. The Tenant submitted that her son would not shoot at a window.

The Tenant acknowledges that she wrote the email to the Landlord regarding paying for a broken window; however, she submitted that the email was regarding the bathroom window that was damaged by a bird. The Tenant submitted that she has since changed her mind on being responsible for the damage to the bathroom window.

Window Repair \$140.00

The Landlord testified that damage was done to an arched window in a building on the property named the sugar shack. The Landlord testified that the Tenant's son put holes in a window using a BB gun. The Landlord submitted that there are pinholes in the window which caused the outer film to separate.

The Landlord testified that she got quotes for the repair of the window but she has not had the window repaired yet. The Landlord testified that she does not have evidence that the damage was caused by the Tenant.

In response the Tenant testified that she does not take responsibility for the damage done to the window.

Cleaning Chicken Coops \$75.00

The Landlord testified that she has chicken coops on the property. The Landlord testified that the Tenant had chickens on the property and the Tenant used the coops. The Landlord testified that the Tenant left the chicken coops dirty and they needed to be cleaned out. The Landlord testified that the three chicken coops needed to be scrubbed with bleach and other products to kill any mites. The Landlord provided photographs of the unclean chicken coops.

In response the Tenant testified that at the beginning of the tenancy the Landlord encouraged her to use the chicken coops. The Tenant testified that she did not clean out the chicken coops before she moved out. She testified that she left the coops in the same condition as she found them at the beginning of the tenancy.

Restoring Patio and Deck \$140.00

The Landlord is claiming \$140.00 for the cost of having to clean the yard. The Landlord testified that it took 4 hours to clean up morning glory, garbage, and debris left on the property. The Landlord testified that she hired a person at \$35 per hour to clean up the yard. The Landlord provided photographs of the morning glory and the garbage and debris left on the property.

In response, the Tenant testified that the landscaping was originally included in the tenancy agreement. She testified that the landscaper quit and that the Landlord didn't replace the landscaper.

The Tenant testified that she's not responsible for the cost of the removal of the morning glory. The Tenant and acknowledge that the garbage and debris belong to the Tenant.

The Landlord responded by testifying that she does not agree the yard maintenance was part of the tenancy agreement. The Landlord referred to page six of her documentary evidence. The landlord states the Tenant was tardy with dealing with the

lawn. The Landlord testified that 1.5 hours of the effort relates to dealing with the Tenants garbage.

The Tenant testified that the Tenants did mow the lawn. The Tenant testified that the morning glory and weeds were growing under the deck. The Tenant referred to documentary evidence of an email that shows what was included in the rent.

An email sent from the Landlord to the Tenant dated January 21, 2017, states that everything is included in the rent and internet is included. The email indicates that Dennis will continue to do whacking of weeds. An email sent from the Landlord to the Tenant on March 14, 2015, states that Dennis is no longer working for the Landlord and requests that the Tenants pick up the loss.

Restoring Raised Beds and Front Entrance \$105.00

The Landlord testified that there are eight garden beds on the property. The Landlord testified that the Tenant left the garden beds with plants growing in them and she had to have the plants removed. She testified that she hired a person to remove the plants at a cost of \$35 an hour for 3 hours.

The Tenant testified that they grew vegetables in the garden beds. She testified that the plants were still growing when the tenancy ended, so she left the growing plants behind for the benefit of the Landlord.

Painting \$100.00

The Landlord is claiming compensation for having to prepare and paint the walls in the rental unit.

The Landlord testified that the parties had a conversation regarding painting the interior of the rental unit but she believed the conversation was about painting the bedroom. The Landlord testified that the Tenant was not given permission to paint the hallway and that the ceiling was over rolled. The Landlord testified that the Tenant put anchors on the walls and tried to patch over the holes. The Landlord provided color photographs of the master bedroom wall and hallway ceiling.

In response the Tenant testified that the damage to the wall was caused by a shelf. The Tenant testified that she did not have enough paint to cover the wall so she had a conversation with the Landlord and the Landlord told her not to paint. She testified that the Landlord was not happy with her painting ability.

In response the Landlord testified that she did not tell the Tenant not to paint the wall.

#### Security Deposit

The Landlord testified that she did not conduct a move in, or move out inspection with the Tenants. The Landlord testified that the tenancy ended on August the 31, 2016. The Landlord testified that she received the Tenants forwarding address in writing on August the 31, 2016, at 7:00 p.m.

The Landlord applied for dispute resolution on September the 15, 2016, requesting to retain the security deposit.

#### Tenant's Application

##### Rent Increase \$450.00

The Tenant is seeking compensation for an illegal legal rent increase and an increase to her utility costs. The Tenants received a notice of rent increase from the Landlord on November 29, 2015. The notice of rent increase indicates that the Tenants rent will be increasing by \$46.00 as of March 1, 2016. The Landlord also added a notation on the notice that the hydro costs are increasing by an additional \$100.00.

The Tenant testified that the parties entered into a discussion about the rent increase and the additional hydro. The Tenant testified that the parties mutually agreed to settle the matter by increasing the rent to \$1,675.00 per month.

The Tenant testified that she felt pressured to enter into an agreement with the Landlord to pay more rent and utilities, or face having the tenancy ended. The Tenant provided copies of a number of emails exchanged by the parties on November 28, 2015, where the Landlord states she has to cancel internet, add a 2.9 % rent increase and increase the hydro costs by \$100.00 per month.

##### Closet Organizer \$40.00

The Tenant testified that she left a closet organizer behind in the rental unit. She submitted that the Landlord agreed to compensate her in the amount of \$40.00 for the cost of the closet organizer. The Tenant testified that the Landlord never paid her.

In response the Landlord stated that the parties did have a conversation about the closet organizer and the Landlord agreed to keep it; however, there was no agreement that the Landlord would pay the Tenant for it.

Internet Fee \$449.12

The Tenant testified that internet service was included in the rent. She testified that the Landlord requested that she get her own internet service. She testified that the Landlord cancelled the Landlord's internet service and the only internet service on the property belonged to the Tenant. She testified that the Landlord moved back into the lower suite and began to use the Tenant's internet service.

The Tenants provided a copy of an email she received from the Landlord on November 28, 2015, that states the Landlord is cancelling the internet service with no reduction in rent.

The Tenants are seeking compensation for the cost of the internet service. The Tenant testified that she paid for the same level of service that was provided by the Landlord. The Tenant referred to documentary evidence of an email from the Landlord dated January 21, 2015, which outlines services that were included in the tenancy.

The Tenants provided copies of the bills received from the internet provider from the period of December 2015 to July 2016.

In response, the Landlord acknowledged that the Tenants were informed at the start of the tenancy that they had use of the Landlord's internet service.

Security Deposit \$900.00

The Tenant is seeking the return of double the security deposit.

Analysis

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

The Guideline states that the right of a Landlord to obtain the Tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- *the landlord does not offer the tenant at least two opportunities for inspection as required; and/or*
- *having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.*

The policy guideline also provides that a Landlord, who has lost the right to claim against the security deposit for damage to the rental unit, retains the following rights:

- *to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
- *to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

Residential Tenancy Policy Guideline # 22 Termination or Restriction of a Service or Facility states that a Landlord may restrict or stop providing a service or facility, other than an essential service or material term, if the Landlord gives the Tenant 30 days written notice and reduces rent to compensate the Tenant for loss of the service or facility.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

#### Landlord's Application

##### Junk Removal \$210.00

I find that the Tenant left the piano/organ behind in the rental unit when she moved out. While I accept that there was a conversation about disposal of items, there is insufficient evidence from the Tenant that there was an actual agreement that the parties would share the cost of disposing the piano/organ. I find that the Tenant is responsible for the cost of disposing the piano/organ.

I grant the Landlord \$210.00 for the cost of pick up and disposal of the piano/organ.

##### Wall Disposal \$175.00

I find that the Tenant constructed a wall in the rental unit and left the wall in place when the tenancy ended. There is insufficient evidence from the Tenant that there was an agreement from the Landlord that the wall could remain or that the Tenant would not be responsible for leaving the wall in place.

I find that the Tenant is responsible to leave the rental unit in the same condition as it was at the start of the tenancy. I grant the Landlord \$175.00 for the cost of deconstructing the wall and disposing of the materials.



Window Replacement \$402.85

The Landlord submits that the Tenant is responsible for a broken bathroom window. The Tenant submits that the broken window was caused by a bird. The Tenant submitted that she changed her mind on taking any responsibility for the damage caused by a bird.

While the Landlord suggests that the Tenants' son may be responsible for causing the damage, there is insufficient evidence to prove this suggestion.

When parties provide equally believable testimony, the burden to prove a claim rests with the Applicant. There is insufficient evidence from the Landlord to prove that the Tenant caused the damage to the windows.

The Landlord's claim for \$402.85 is dismissed.

Window Repair \$140.00

There is insufficient evidence from the Landlord that the Tenant or the Tenant's son is responsible for the pin hole damage caused to the window. The Landlord's claim for \$140.00 is dismissed.

Cleaning Chicken Coops \$75.00

I find that the Tenant used the chicken coops for her chickens, and did not clean the coops before she moved out of the rental unit. I find that the Tenant is responsible to clean the coops at the end of the tenancy, despite her submission that she left the coops in the same condition that she found them at the start of the tenancy.

I grant the Landlord \$75.00 for the cost of cleaning the chicken coops.

Restoring Patio and Deck \$140.00

I find that the Landlord was required to provide the service of weeding as a term of the tenancy agreement. The Landlord stopped providing this service when Dennis stopped working in March 2015.

The Landlords claim to be compensated for the cost of weeding the morning glory is dismissed.

The Tenant acknowledged that the garbage and debris belonged to the Tenant, therefore, I grant the Landlord 1.5 hours at \$35.00 per hour for dealing with the garbage and debris.

The Landlord is granted \$52.50.

Restoring Raised Beds \$105.00

I find that the Tenants used the garden beds to grow a garden and they left vegetables still growing when they vacated. The Tenants are responsible to leave the garden beds in the same state that they found them. While I acknowledge that the Tenants mentioned to the Landlord that they left the vegetables growing, they should have sought permission to leave them “as is” prior to vacating the rental unit.

I grant the Landlord \$105.00 for the cost of restoring the eight garden beds.

Painting \$100.00

The Tenant did not dispute that the hall ceiling was over-rolled and that the master bedroom wall was left unpainted. I find that the Tenant is responsible for the damage and is responsible for the cost of the repairs.

I grant the Landlord \$100.00 for the cost of painting the wall and ceiling.

Security Deposit

Section 38 (5) of the Act states that the right of a landlord to retain all or part of a security deposit or pet damage deposit does not apply if the liability of the Tenant is in relation to damage, and the Landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished due to non-compliance with the requirement of an inspection of the rental unit at the start and end of the tenancy.

The Landlord failed to conduct a move in inspection of the rental unit at the start of the tenancy. The Landlord made application for dispute resolution on September 15, 2016 seeking to keep the security deposit. I find that the Landlord's right to claim against the security deposit is extinguished. The Landlord was not entitled to file a claim to retain the security deposit for damage to the rental unit.

While the Tenant may not have participated in a move out inspection, I find that the Landlord did not conduct an inspection at the start of the tenancy and therefore the Landlord extinguished the right to claim against the deposit first.

Since the Landlord applied for dispute resolution within 15 days of the end of the tenancy and is seeking to deal with the security deposit, I find that the penalty provision

of section 38(6) of the Act does not apply. The amount of the security deposit is not doubled.

While the Landlord lost the right to claim against the security deposit for damage, the Landlord retains the right to file a claim for damages arising out of the tenancy, including damage to the rental unit.

I grant the Tenant the security deposit in the amount of \$450.00.

### Tenant's Claims

#### Security Deposit

The Tenant's claim for the return of double the security deposit is explained earlier in this decision. I grant the Tenant the security deposit in the amount of \$450.00.

#### Rent Increase \$450.00

I find that the notice of rent increase dated November 29, 2015, for a \$46.00 increase in rent was a legal notice and increase. The notice was issued with three months' notice, and is for an allowable amount. I find that the Landlord's notation on the notice indicating a \$100.00 increase to hydro was not a legal increase.

Other than a rent increase allowed under the regulations, terms of a tenancy agreement cannot be changed unless both parties are in agreement to make the change. A Landlord cannot unilaterally change or impose an increase for utilities.

The Tenant was under no obligation to agree to pay an additional \$100.00 per month for hydro costs and could have refused to pay, or applied for dispute resolution.

I find that the parties discussed the increases to rent and hydro and entered into a mutual agreement that the Tenant would pay rent in the amount of \$1,675.00 per month.

The new monthly rent of \$1,675.00 that was agreed upon is for a lesser amount than the Landlord was proposing. The Landlord was seeking \$1,746.00. This leads me to find there was a negotiation between the parties that lead to the mutual agreement.

The Tenant had the option to take the matter to a dispute resolution hearing but did not do so. I do not find that the Tenant was coerced into changing the terms of the agreement.

The Tenants claim for \$450.00 is dismissed.

Closet Organizer \$40.00

During the hearing, the Landlord agreed to return the Tenant's closet organizer. I order the Landlord to return the Tenants closet organizer.

The Tenants claim for \$40.00 is dismissed.

Internet Fee \$449.12

I find that the tenancy agreement included internet service as part of the rent. I find that the Landlord terminated the internet service with no reduction to the Tenants' monthly rent.

I grant the Tenant \$449.12 in compensation for past rent that should have been reduced.

Set Off of Claims

The Landlord has established a monetary claim in the amount of \$717.50.

The Tenants are awarded the return of the security deposit, and an additional \$449.12 for loss of a service. The Tenants have established a claim in the amount of \$899.12.

After setting off the amounts of the awards, I grant the Tenants a monetary order in the amount of \$181.62. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord and Tenants were both successful in their applications, I decline to order either party to pay the other for the cost of the filing fee.

Conclusion

The Landlord established a claim for cleaning and damage in the amount of \$717.50.

The Tenants established a claim in the amount of \$899.12 for the return of the security deposit and for loss of a service.

After setting off the amounts of the awards, I grant the Tenant a monetary order in the amount of \$181.62. This order must be served on the Landlord and may be enforced in Provincial 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: April 5, 2017

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Residential Tenancy Branch