



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MND MNDC MNSD FF

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. They agreed that the landlord served the Application by registered mail and some documents personally. I find the landlord's documents were legally served pursuant to section 89 of the Act for the purposes of this hearing. The landlord said they got no evidence from the tenant and the tenant said she submitted it to the Residential Tenancy Branch. However, none was received for the file. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7 and 67 for and damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

### **Issue(s) to be Decided:**

Has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to recover the filing fee?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced December 7, 2014, a security deposit of \$300 was paid and rent was \$600 a month. The tenant vacated the unit on October 31, 2016 but left a boat, motor and trailer on the property for a further 11 days. The premises are a 1972 trailer in good condition with an addition added about 5 years ago. These facts were not disputed by the tenant.

The landlord claims as follows:

1. \$256.86 to replace a sealed glass window that was 5 years old. The tenant said it broke because it was close to the stove and it broke when they started a fire one cold night. She thinks the stove was too close to the window. The landlord said the stove was installed to spec of over 16" from a window and legally

approved for motor home use. They had had no problems with it before the tenant moved in.

2. \$698.07 for supplies to replace a 5 year old laminate floor which had wood curling up and blistering. An estimator said it was likely from water damage and the landlord said it was because the tenant used a mop to wash it with too much water. The tenant objected and said it was not noted on the move-out report by the female landlord. In fact, the female landlord hugged her and she had the impression that things were satisfactory. The female landlord said the living room and bedroom floors were wet when she inspected so she did not notice the wood was damaged. The male landlord came later that day and added some items to the move-out report including the floor problem which he noticed.
3. \$861.00 to remove the damaged floors and reinstall laminate.
4. \$10.70 to replace keys. The tenant agrees to this charge.
5. \$44.80 for a load of topsoil to fill ruts left by people driving and parking and \$20 for labour to spread it. The parties agreed the tenant's in-laws did have a trailer there for a time but the tenant said the landlord never objected at the time and there are no pictures to prove the ruts were not there before. The tenant said the land was a mess and they had to do a lot of clean up when they moved in. The landlord said the previous tenant was evicted and there was a mess but they cleaned it up themselves.
6. \$60 for 3 hrs of landlord time and dump fee to remove metal, glass and other items left in a burn pile. The tenants burned their garbage and left all the non-burnable items. The landlord said the male tenant had a little forge and was using some of the metal and discarded in the burn pile what he did not want.
7. \$75 to replace a bedroom door and frame with a used door. It dated from 1972 and the tenant said there was already a hole in it at move-in.
8. \$55 for storing the boat, motor and trailer for 11 days. They did not advise the tenant that they would be charging storage but the landlord pointed out that when a tenant vacates, they are supposed to remove all their property.
9. \$40 to remove a rock pit built into the septic tank. The tenant said there was nothing said about it at the time and the new tenant has moved it already. The landlord did not know if this was true but there would be no charge if the new tenants had moved it.

The landlord supplied photographs as evidence of the damage, a condition inspection report at move-in and move out and some invoices.

The tenant provided no documents or witnesses to dispute the claim. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

### **Analysis**

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

#### **Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the *Act* does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the *Act*, the regulations or a tenancy agreement.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the *Act* and the tenancy agreement impose an obligation for the tenant to maintain the property and repair it if damage is caused by their actions or neglect. I find the landlord's evidence credible that this tenant caused the damage to the window. Although the tenant contended it was because a stove was too close to the window, I find insufficient evidence of that. I find the landlord's evidence credible that it was installed according to specifications and correctly. The credibility is supported by the fact the window was 5 years old and there was no previous problem. The Residential Policy Guideline assigns a useful life to elements in rented premises which are designed to account for reasonable wear and tear. Windows are assigned a useful life of 15 years. As this window was 5 years old when damaged, I find the landlord entitled to recover 66% of the cost of replacement or \$169.52.

In respect to their claim for laminate floor replacement due to water damage, I find insufficient evidence to support the landlord's claim. I place little weight on the move-out report as it was completed subsequent to the female landlord and the tenant doing an inspection and not noticing anything wrong with the floors. This is an important document and the female landlord agreed she did not notice anything wrong with the floors when she did the inspection "because they were wet". The move-in report notes there is "some scuffing" on the floors. I find insufficient evidence that the tenant caused

the further damage resulting in replacement so I find the landlord not entitled to the cost of supplies and labour to replace the floors.

I find the landlord entitled to recover \$10.70 for costs of keys as agreed by the tenant.

I find the tenant or people permitted on the property by them damaged the property by driving over it continually and they did not repair the damage as required by the Act and tenancy agreement. The fact that the tenant had relatives stay there in a trailer and the photographs of driving ruts on the property supports the landlord's evidence that this was done by the tenants or guests. Whether or not the land needed clean up at move-in, I find the ruts show recent usage so I find the landlord entitled to recover costs of \$64.80 to repair the land. I also find the weight of the evidence is that the tenants used a burn pit to burn their garbage which resulted in many non-burnable items accumulated such as cans, glass and metal. I find the landlord entitled to recover \$60 for labour to remove these items. However, I find insufficient evidence that the landlord will have to move the rock pit built into the septic bed as the tenant said the new tenants whom she knows have moved it already. The landlord did not know. I find him not entitled to recover this estimated cost.

While the landlord did not inform the tenant of storage charges, I find she had an obligation under her lease and the Act to vacate the property when she moved out on October 31, 2016. Her rent was \$19.35 a day for the whole premises but the landlord has claimed only \$5 a day for storage of a boat, motor and trailer. As the female landlord said, they were under an insurance liability to protect these goods also. I find the landlord entitled to claim \$55 for storing the boat, motor and trailer for 11 days.

In respect to the replacement of a broken door, I find the Guidelines assign a useful life of 20 years to doors. This door was 44 years old so I find the landlord is not entitled to recover replacement costs as it had no remaining useful life.

As pointed out to the landlord in the hearing, section 72 of the Act permits the award of the filing fee for the process of Arbitration but this does not include costs of service like registration fees. I find them not entitled to recover registered mail fees.

### **Conclusion:**

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

### **Calculation of Monetary Award:**

Allowed cost of window	169.52
Key cost	10.70
Repair of ruts in land	64.80
Removal metal etc. from fire pit	60.00
Storage 11 days	55.00
Filing fee	100.00
Less security deposit	-300.00
<b>Total Monetary Order to Landlord</b>	<b>160.02</b>

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: May 10, 2017

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Residential Tenancy Branch