



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit, for money owed or compensation for damage or loss, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The landlord provided photographs; however, those photographs were not provided to the tenant. Therefore, I have excluded those as evidence. The parties confirmed receipt of all other evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties entered into a fixed term tenancy that began on August 1, 2016, and was to expire on July 31, 2017. Rent in the amount of \$1,500.00 was payable on the first of each month. The tenants paid a security deposit of \$750.00. The tenancy ended on October 31, 2016.

The parties agreed a move-in and move-out condition inspection report was completed.

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The landlord claims as follows:

a.	Loss of rent for November 2016	\$1,500.00
b.	Two chairs taken	\$ 400.00
c.	Hydro	\$ 207.00

d.	Cleaning	\$ 175.00
e.	Yard cleaning	\$ 200.00
f.	Door damage and missing light bulbs	\$ 85.00
g.	Plumbing repair	\$ 300.00
h.	Damage living room floor	\$1,125.00
i.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$4,092.00</b>

#### Loss of rent for November 2016

The landlord testified that the tenants gave 14 days' notice to end the tenancy effective on October 31, 2016. The landlord stated that the tenants breached their fixed term tenancy agreement and there was not sufficient notice to re-rent the unit. The landlord stated that they immediately advertised the rental unit and they were unable to find a new tenant for November 1, 2016, due to short notice. The landlord seeks to recover loss of rent for November 2016, in the amount of \$1,500.00.

The tenant testified that they had their family staying with them and the landlord told them that the family needed to leave or they need to find alternate living accommodations.

The landlord responded that the tenants were in breach of their tenancy agreement by moving in several additional people. The landlord stated that they told the tenants that they had to have the additional people leave. The landlord stated that they were not releasing the tenants from their tenancy agreement.

#### Two chairs taken

The landlord testified that since the tenants had no furniture at the start of the tenancy they gave them two leather chairs to use. The landlord stated that at the end of the tenancy the tenants had taken the chairs. The landlord stated that they had purchased the chairs for \$1,000.00, the year prior. The landlord seeks to recover a portion of the amount they paid for the chairs in the amount of \$400.00.

The tenant testified that the packagers packed up the chairs that were borrowed from the landlord. The tenant stated did not return the chairs, even after they were aware of the error.

#### Hydro

The landlord testified that the tenants' portion of the hydro was 75% and the downstairs portion was 25%. The landlord stated that the tenants did not pay the balance owed for utilities in the amount of \$207.00.

The tenant testified that they did agree to pay 75% of the hydro at the start of the tenancy; however, later they decided that this amount was not fair, as the landlord should provide separate meters.

#### Cleaning

The landlord testified that when they attended to do the move-out condition inspection report the rental unit was not cleaned. The landlord stated the floors had to be swept and washed, there was hair stuck to the walls, underneath the appliances had to be cleaned, the blinds needed to be dusted, the window sills clean, and the basement floor was dirty with cat litter and feces. The landlord stated it took seven hours to clean. The landlord seeks to recover the amount of \$175.00.

The tenant testified that they were still cleaning the premises when the landlord attended, sometime after 12:00 noon. The tenant stated that the landlord had cleaners with them, which they found this to be odd. The tenant stated that the landlord should have given them more time to finish the cleaning.

#### Yard cleaning

The landlord testified that the tenants were responsible to cut the lawn, which was not done at the end of the tenancy. The landlord stated that the tenants also left garbage in the yard that they had to have removed. The landlord stated that they paid \$400.00 to have the work completed; however, they are only seeking to recover 50%. The landlord seeks to recover the amount of \$200.00.

The tenant testified that it was impossible to cut the grass prior to leaving as it had rained for several days. The tenant stated that they did not leave any garbage behind. The tenant stated that the landlord was having trees and a grape vine pruned and believe the cost is related to those items.

#### Door damage and missing light bulbs

The landlord testified that there were several light bulbs burnt out at the end of the tenancy. The landlord seeks to recover the amount of \$10.00.

The landlord testified that the tenants caused damage to one of the doors, as they had stuck velcro to the door. The landlord stated that when the velcro was removed it took the paint off the door. The landlord stated that it took 3 hours to repair the door.

The tenant testified that they do not deny there were light bulbs burnt out; however, they feel \$10.00 is too much for replacement.

The tenant testified that it was not velcro that they used on the door it was electrical tape. The tenant stated that they feel three hours to repair the door is excessive.

#### Plumbing repair

The landlord testified that the tenants snapped the drain plug off in the bathtub and it had to be repaired. The landlord stated that the kitchen faucet was also loose and leaking and they had to be tightened. The landlord seeks to recover the cost of the plumber in the amount of \$300.00.

The tenant testified that the bathroom plug to the drain was not fastened at the start of the tenancy as it was just sitting in the drain. The tenant testified that the kitchen faucet was loose during the tenancy and that they notified the landlord of this problem.

### Damage living room floor

The landlord testified that the tenants caused damage to the hardwood living room floor. The landlord stated that the tenants had no furniture, except for the two chairs that were provided to them and it appears they were using something like a box cutter that damaged the wood flooring.

The landlord testified that they received a quote for a low-grade floor, as they are financially unable to replace the wood floor.

The tenant testified that the floors were gauge with big long marks when the tenancy started. The tenant stated the floors were old, and nails kept popping up, snagging their shoes and socks. The tenant stated that there was no way they would use a box cutter on the floor.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 21 of the Regulations states a condition inspection report completed in accordance with this section is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

### Loss of rent for November 2016

Section 45 of the Residential Tenancy Act states:

*45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice,*  
*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) is the day before the day in the month, or in the other period on which the tenancy is based,*

In this case, the evidence of the landlord was that the tenants breached the fixed term tenancy by providing 14 days' notice to end the tenancy on October 31, 2016. However, under the Act

the tenants were not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenants have breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was July 31, 2017.

However, under section 7 of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

In this case, the evidence of the landlord was that they advertised the property for rent and was not able to find a new renter for the month of November 2016, due to short notice. I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for November 2016, in the amount of **\$1,500.00**.

#### Two chairs taken

I accept the evidence of both parties that the tenants were provided with two leather chairs to use during their tenancy and that the tenants took those chairs at the end of the tenancy. I find the tenants have breached the Act, when they failed to leave the chairs behind and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the amount of **\$400.00**

#### Hydro

I accept the evidence of both parties that the tenants agreed to pay for 75% of the utilities under their tenancy agreement. The fact the tenants later felt this amount was unfair, that is not for me to consider, as they agreed to pay this at the start. I find the tenants have breached the Act when they failed to pay the utilities owed and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the amount of unpaid utilities in the amount of **\$207.00**.

#### Damages

Section 37 of the Residential Tenancy Act states:

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

#### Cleaning

The tenants agreed in the move-out condition inspection report that they were responsible for the cleaning. The evidence of the tenant was they were not given sufficient time to clean the premises and the landlord attend at some time after 12:00 noon.

Section 37(1) of the Act states, tenants must vacate the rental unit at 1:00 pm on the day the tenancy ends. The tenant could not provide the time the landlord attended, except after 12:00 noon. Therefore, I find it more likely than not the landlord attended the premises at 1:00 pm. The landlord was not required to give the tenants additional time for cleaning.

I find the tenants have breached the Act, when they failed to leave the rental unit reasonably clean, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of cleaning in the amount of **\$175.00**.

#### Yard cleaning

The tenants agreed in the move-out condition inspection report that they were responsible for the cutting of the grass. The tenants did not agree they were responsible for the garbage.

In this case, the landlord is claim 50% for the yard cleaning and the tenants' portion is \$200.00. The landlord did not submit a copy of the invoice for my review or considerate. I find the amount claimed by the landlord appears to be high as that amount for cutting grass and removing some garbage appears to be high.

I find a nominal amount is appropriate to recognize the breach of the Act by the tenants when they failed to cut the lawn or remove garbage. Therefore, I grant the landlord a nominal amount of **\$20.00**.

#### Door damage and missing light bulbs

The tenants agreed in the move-out condition inspection report that they were responsible for the damage door. While the tenants believed the amount of three hours to repair the door is unreasonable, they provided no documentary evidence to support this, such an estimate for repair. I find the tenants have breached the Act when they caused damage to the door and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of the repair in the amount of **\$75.00**.

The tenant acknowledged that they left burnt-out light bulbs at the end of the tenancy. While the tenants believe the amount \$10.00 is excessive, they have provided no documentary evidence to support this. I find the amount claimed is reasonable. I find the tenants have breached the Act when they failed to replace the burnt out lights during their tenancy and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of the light bulbs in the amount of **\$10.00**.

#### Plumbing repair

The move-out condition inspection report shows that the plug for the drain was broken. The tenants did not agree that they were responsible for the cost in the report. The evidence of the tenant was that the plug was not fastened in the drain when the tenancy commenced. I accept the evidence of the tenant that the plug to the drain was not fastened at the start of the tenancy, as the landlord did not confirm or argue the tenants eversion. I find the landlord has failed to prove that the tenants caused the damage to the plug.

I accept the kitchen sink faucet was loose and leaking at the end of the tenancy. However, the landlord submitted no evidence that this was caused by the neglect of the tenants. Rather, I find it is more likely than not, that this was caused by normal wear and tear under reasonable use. It is the landlord's responsibility to maintain and repair faucets. I find the landlord has failed to prove the tenants caused the damage to the plug.

Based on the above, I find the landlord has not met the burden of proof. Therefore, I dismiss this portion of the landlord's claim.

Damage living room floor

The move-out condition inspection report shows that the living room floor was scratched and damaged. The tenant agreed in the report that they were responsible for the damage.

The evidence of the landlord was that they received an estimate for low-grad flooring; however, the landlord did not submit a copy of the estimate for my review or consideration. Further, under Residential Tenancy Policy Guideline #40 the useful life of a building elements, states that the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement. I find that I am unable to determine if the amount claimed by the landlord is reasonable due to insufficient evidence.

I find a nominal amount is appropriate to recognize the breach of the Act by the tenants when they caused damage to the floor. Therefore, I grant the landlord the amount a nominal amount of \$100.00.

I find that the landlord has established a total monetary claim of **\$2,387.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$750.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,637.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that the costs of such enforcement are recoverable from the tenants.

Conclusion

The landlord is granted a monetary order, may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 26, 2017

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Residential Tenancy Branch