



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on November 15, 2016. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The landlord testified that this tenancy started on February 01, 2016 although the tenant took possession of the unit a week or so before that without the landlord's permission. The parties had a verbal agreement

that the tenant could rent this unit for two years. Rent was agreed at \$1,700.00 per month due on the first of each month. The tenant paid a security deposit of \$850.00 on January 17, 2016.

The landlord testified that at the start of the tenancy her agent went to the unit to attempt to do a move in inspection with the tenant; the tenant refused her agent entry and said as he had already moved into the unit a move in inspection was not required.

The landlord testified that the tenant failed to pay rent for August, 2016. The landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent. This was served upon the tenant on August 12, 2016. The tenant did not pay the outstanding rent of \$1,700.00 for August. The tenant also failed to pay rent for September, 2016 and vacated the rental unit on September 23, 2016. The landlord testified that the tenant provided a forwarding address in writing by mail which was received by the landlord on October 21, 2016.

The landlord requested an amendment to her application as she omitted to include the unpaid rent for August and was not aware when she filed her application that she was entitled to recover rent for the entire month of September. The landlord had simply calculated the rent owed for 23 days in September. The landlord therefore seeks to recover \$3,400.00 in unpaid rent.

The landlord testified that the tenant left the carpets unclean at the end of the tenancy. The tenant had kept pets in the unit without the landlord's permission and did not pay a pet damage deposit. The landlord has provided photographic evidence showing the carpets were left dirty. The landlord has also provided a written statement from the previous tenant who has written that the residence was clean inside and out; the carpets were professionally cleaned at the end of that tenancy. The window coverings, doors, deck railing, and plumbing fixtures were all in a good condition and clean. The landlord returned that tenant's security and pet deposit in full. At the end of this tenancy as the carpets were left dirty, the landlord had the carpets professionally cleaned and seeks to recover the cost incurred of \$482.00. The invoice has been provided in documentary evidence.

The landlord testified that after the carpets were cleaned some of the marks returned and other damage was identified to the carpet. The tenant's pet had ripped the carpets by the door, a thread had been pulled right through on the carpet and there was a burn mark. This damage could not be repaired and the landlord ended up having to have the carpets replaced for a like for like carpet. The landlord seeks to recover the costs incurred for the new carpets of \$2,443.16. The landlord referred to her photographic evidence showing this damage and the invoice for the new carpets.

The landlord testified that at the end of the tenancy the landlord's agent found that the tenant had taken many of the lightbulbs. The landlord seeks to recover costs to replace these light bulbs of \$12.09. A copy of the receipt has been provided in documentary evidence.

The landlord testified that the tenant left damage to the walls including some "art" work painted on the walls with oil based paint. The landlord repaired the walls and did the painting herself and does not seek to recover her labour costs but does seek to recover the cost for the paint of \$259.45. The landlord has not provided photographs showing any damage to the walls but has provided the receipt for the paint. The landlord testified that the tenant left the sewer line blocked. Sand, rocks and some clothing was removed from the sewer line. The landlord seeks to recover \$188.87 for this work and has provided the invoice in documentary evidence.

The landlord testified that the tenant had left his deep freezer unplugged and outside in the sun. When this freezer was opened it was found to contain 350lbs of rotting meat. This had to be removed and three men had to do this unpleasant job and then dispose of the freezer. The landlord referred to a statement from her agent who helped do this work and the landlord seeks to recover \$500.00 paid to these men.

The landlord testified that there was a great deal of other damage to the unit but as the landlord has not yet done the remainder of the repairs she has not made a claim. The landlord referred to her photographic evidence showing other damage to the unit to show how the unit was left at the end of the tenancy.

The landlord seeks an Order permitting her to apply the security deposit to her monetary claim. The landlord also seeks to recover the filing fee of \$100.00.

The landlord testified that although she did apply for a Monetary Order for money owed or compensation for damage or loss there is no further monetary claim.

### Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's undisputed evidence before me.

With regard to the landlord's request to amend her application to recover unpaid rent for August and for the entire month of September; I have allowed the landlord to amend her application as the tenant was put on Notice by way of the 10 Day Notice to End Tenancy for unpaid rent, that rent was not paid for August and the tenant should have been aware that this money was still outstanding. The tenant should also be aware that he is responsible for the rent for the entire month of September, 2016.

I refer the parties to s. 26 of the Act which states:

*26. 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.*

There is no evidence before me to show the tenant had a right under the *Act* to deduct any rent for August or September; I am therefore satisfied that the rent for these months remains outstanding and I uphold the landlord's claim to recover the amount of **\$3,400.00**.

With regard to the landlord's application concerning damage to the rental unit; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I also refer the parties to the Residential Tenancy Policy Guidelines (the guidelines) #1 which deals with the landlords and tenants responsibility for residential premises. Part of this guideline provides guidance on the landlords and tenants responsibility concerning the cleaning of carpets and states:

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

I am satisfied from the undisputed evidence before me that the tenant failed to clean the carpets and that there were pets in the rental unit; I am also satisfied that the carpets had been professionally cleaned at the start of the tenancy. I therefore find the landlord has established a claim to recover the costs for carpet cleaning of **\$482.00**.

With regard to the landlord's application for replacement carpets due to the damage caused by the tenant and the tenant's pet or pets; I am satisfied that after the carpets were cleaned the staining came back through to the surface of the carpet. I am also satisfied that there was other damage to the carpets such as pulls tears and a burn mark. The landlord did not do a move in condition inspection at the start of the tenancy but has provided evidence from the former tenant who has stated that the unit was in a good condition at the end of her tenancy and that the landlord had returned her security and pet deposit in full. As the tenant has not appeared at the hearing to dispute the landlord's claim concerning the cost for the replacement carpets, then I am satisfied that this damage was caused during the tenancy. However, the landlord did not disclose the age of the carpets at the hearing, As it has been established that the carpets were not new at the start of the tenancy and were in place for at least the former tenancy, then any monetary award must reflect any depreciated value of the carpet over their useful life of 10 years. I have therefore deducted 50 percent of the landlord's claim to take into account any undisclosed depreciated value of the carpets and award the landlord the amount of **\$1,221.57**.

With regard to the landlord's application for the cost of light bulbs; I again refer the parties to the guidelines #1 which provides guidance on the tenant's responsibility to replace any burnt out light bulbs. Clearly the tenant would not have rented this unit without light bulbs and as many bulbs were missing at the end of the tenancy I find the landlord has established a claim to recover the replacement costs of **\$12.09**.

With regard to the landlord's application for paint, the landlord testified that the walls were damaged and there was oil based "art" work left on a wall. The landlord has not provided photographic evidence of the damage to the walls or this "art" work on the walls and therefore I am unable to establish the extent of the

damage or when the walls had last been repainted by the landlord. I therefore find the landlord has not met the burden of proof in this matter and I dismiss this section of the landlord's application.

With regard to the landlord's application for plumbing costs; the landlord has provided verbal testimony that the sewer line was blocked at the end of the tenancy; however, the landlord has insufficient evidence to show that this was caused by the tenant or an invoice from a plumber to detail the work carried out and the actual cost for the work. The landlord has insufficient evidence to show that the tenant was responsible for blocking the sewer lines and that this was not caused by some other means or deficiency. I therefore find the landlord has not met the burden of proof in this matter and this section of the landlord's claim is dismissed.

With regard to the landlord's application to remove rotting meat from a deep freeze and to dispose of the freezer; I am satisfied from the evidence before me that the tenant left this deep freeze unplugged on the property which caused the meat inside the freezer to rot. This could be an unpleasant task for anyone having to remove this meat and dispose of the freezer. The landlord has provided an invoice from her agent who carried out this work with two other men. I therefore find the landlord has established a claim to recover the cost for this work of **\$500.00**.

With regard to the landlord's application to keep the security deposit; I refer the parties to s. 38(1) of the *Act* that says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If the landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenants.

Therefore, based on the above and the undisputed evidence presented I find that the landlord did receive the tenant's forwarding address in writing on October 27, 2016. As a result, the landlords had until November 11, 2016 to return all of the tenant's security deposit or file a claim to keep it. As the landlord did not file her application until November 14, 2016, I find the tenant is entitled under the *Act* to double the security deposit. However, as the landlords claim has merit I find I will offset the tenant's entitlement of **\$1,700.00** against the landlord's monetary award.

As the landlord's application has some merit I find the landlord is entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the *Act*.

Section 67 of the *Residential Tenancy Act* states: Without limiting the general authority in section 62(3) [director's authority], 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.

Consequently, I find the landlord is entitled to a Monetary Order for the following amount pursuant to s. 67 and 72(1) of the *Act*:

Unpaid rent for August and September, 2016	3,400.00
Carpet cleaning	\$482.00
Replacement carpets	\$1,221.57
Bulb replacement	\$12.09
Removal of rotten meat and freezer	\$500.00
Filing fee	\$100.00
Less double security deposit	(-\$1,700.00)
<b>Total amount due to the landlord</b>	<b>\$4,015.66</b>

#### Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$4,015.66**. This Order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the tenant fails to comply with the Order.

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 12, 2017

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Residential Tenancy Branch