



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNDC FF

### Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* ("the Act"). The landlords applied for: a monetary order for unpaid rent, damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for: a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; an order that the landlords make repairs pursuant to section 33; and authorization to recover the filing fee for this application from the landlords pursuant to section 72. At the outset of this hearing, the tenant withdrew her claim for repairs as she has vacated the rental unit.

Both parties attended the hearing with lawyers to assist. Both parties were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

### Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent, for damage or loss?  
Are the landlords entitled to recover the filing fee for this application from the tenant?  
Is the tenant entitled to a monetary order for compensation for damage or loss?  
Is the tenant entitled to recovery of the filing fee for this application from the landlords?

### Background and Evidence

This tenancy began on May 17, 2015 as a 2 year fixed term tenancy. The monthly rental was \$2500.00. The tenant testified that she vacated the rental unit on September 30, 2016. The landlords returned the tenant's \$1250.00 security deposit at the end of the

tenancy. In their respective applications, the tenant sought \$10,102.82 from the landlords and the landlords sought \$5,636.00 from the tenant.

The tenant testified that, she did not move into the rental unit until approximately June 3, 2015 as a result of the need for extra cleaning and repairs to the rental unit. She testified that the windows did not have coverings when she moved in. The tenant testified that she repeatedly asked for window coverings. The tenant refers to her email requests for a variety of repairs to the landlord's agent. The emails state that the blinds need repairs and that the tenant would like to replace them. Both Landlord RM and the landlord's witness testified that, generally, the tenant went ahead and did things on her own, regardless of whether she had sought authorization or been refused authorization.

Landlord RM testified that when the tenant asked for repairs and the landlord agreed to make the repairs, it was impossible to schedule a time to get into the tenant's unit. Landlord RM testified that the tenant did not request a repair to the dryer, as she claims at this hearing and the landlords did not agree to a repair of the dryer. The tenant submitted an invoice dated June 12, 2015 for a new dryer vent pipe, cleaning behind the dryer, and a new clamp. The invoice does not indicate why the work was done or why these items required replacement. The invoice is in the amount of \$250.00.

The tenant sought compensation for the items she added or repaired in the rental unit after she moved in. She testified that there was no written agreement that the landlords would compensate her for these items and she no longer has the bills relating to these purchases. She testified that the landlords verbally agreed to reimburse her for household purchases. Landlord RM testified that he, his co-landlord and his agent did not agree to compensate the tenant for these items. He submitted that she bought them to satisfy her own tastes and all of the required items were present prior to her move-in.

The window coverings were a matter of great contention between these parties. The landlords submitted photographs from April 2015 and May 2015. The photographs showed vertical blinds throughout the rental unit. The landlords submitted that their photographs show intact, functional blinds with no deficits as claimed by the tenant. The blinds in the bedrooms appeared to be complete (not missing any parts). The patio door blinds appear to be complete, as well. One photograph showed one, large main window with a complete set of blinds, with some of the slats bent slightly. The tenant submitted photographs as well however the tenant's photographs are black and white copies of photographs and do not provide any useful evidence with respect to the blinds. The tenant testified that the sunny or white spots in the photographs of the blinds show where the blinds were damaged (did not have slats) and the sun came in.

Landlord RM testified that he and Landlord GW purchased the residential premises. Landlord RM testified that, at the time he viewed the house, he did not identify any issues with the blinds ("window coverings"). He testified that, as they were looking to purchase the residence, he and his co-landlord, Landlord GW would have noticed any deficiencies: that is what they were looking to identify.

The tenant testified that she asked repeatedly for repairs to the existing blinds but that no one ever came to repair them. She testified that she wanted new blinds. Landlord RM reiterated that the blinds in the rental unit were fine and useable. He testified that the tenant asked for new blinds and stated she was willing to pay for new blinds but never did. The tenant testified that the estimates for blinds were too costly for her. At times, in her email correspondence, the tenant spoke as if there were no blinds in the rental unit however the email correspondence shows that there were blinds but the tenant was dissatisfied with their condition. The landlord testified that the tenant never approached the landlords with an actual quote or sent any invoices. However, the tenant testified that the lack of blinds caused her and the other occupants of the unit a great deal of discomfort and loss of sleep.

The tenant also sought compensation for the lack of useable parking space. She referred to the residential tenancy agreement that allowed for parking. She testified that the landlords refused to repair damage to the driveway and that, since she was often unable to park in the driveway, she was forced to park on the street. The tenant provided receipts/invoices for two auto glass repairs, claiming that her car was damaged while parking on the street. The email correspondence included an email from a landlord's representative to say that the driveway would not be repaired at this time. The landlords submitted that there is no evidence to show where the tenant's car was damaged. Further, he testified that the driveway (just not in great condition- with bumps) was useable and regularly used by the tenant and her guests.

The tenant sought compensation for utility bills that she paid during the tenancy. She testified that, when she moved in, the landlord GW asked her to collect utility money from the downstairs tenants for their portion of the utilities. She testified that the downstairs tenants did not pay and as a result she was required to pay the entire utility bills. Landlord RM responded that this was an agreement between the tenants, not written in the tenancy agreement and he does not consider this issue to be the landlords' responsibility.

The tenant sought the return of a container of coins in a variety of currencies that she had when she moved into the rental unit. She testified that the landlords have avoided returning the coins and that she wants them returned. Landlord RM testified that he

attempted, several times, to coordinate a time for the tenant to come to the house and find the container of coins that she stated she had left in the unit. He testified that he had looked for the coins and not found them. He testified that, if he found them, he would provide them to the tenant. The tenant sought compensation for the coins as she stated they were very valuable. She was unable to provide an estimate of the value for the coins.

The tenant testified that she was entitled to aggravated damages. She testified that she admitted there were issues with her rent cheque payment on occasion however she testified that she did a lot at the property. She testified that her 80 year old mother lived with her and made daily responsibilities more cumbersome. She testified that, for she and her daughter, the lack of blinds in the rental unit were a huge problem. She argued that the landlords were difficult and took no responsibility for the care of their rental property. She testified that they did not respond to her requests and therefore she was required to both complain regularly and take action herself when she was able.

A representative for the landlord attended briefly as a witness in this hearing. She testified that she did not authorize any repairs by the tenant and she did not agree to compensate the tenant for any work done. She acknowledged email conversations with the tenant and testified that she informed the tenant that she would send someone to assess certain parts of the rental unit, including the blinds. She testified that it was very difficult to arrange to have someone attend to assess or repair damage.

The landlords claimed that the tenant's \$2500.00 September 2016 rent cheque was returned and not replaced by the tenant. The landlords submitted bank records that show the returned cheque. The landlords submitted a copy of a bank draft stamped by the bank, "redeemed by purchaser". The tenant testified that the bank draft was given to replace the rent cheque and that the landlords were in fact paid for September rent. However, the landlord testified that the stamp, "redeemed by purchaser" is evidence that the tenant cashed the draft herself.

### Analysis

With any type of repair, even emergency repairs, a landlord must be advised by the tenant that a repair is necessary and be given an opportunity to determine what steps they will take towards the repair. Therefore, with respect to the tenant's invoice for repair of a dryer in her application materials, I find that the tenant did not provide notice to the landlord that repairs were required or allow the landlord the option of making repairs. Finally, the tenant did not, with respect to the repair of the dryer and with respect to many of the items listed in her monetary claim, have the permission of the

landlord to make repairs. As the property is the responsibility of the landlord, it is both the landlord's obligation and prerogative to determine how to address repair issues.

Section 32 of the Act describes the landlord and tenant obligations to repair and maintain the unit,

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

...

With respect to the window coverings and the installation of shelving, I find that the tenant's concern with the condition of the rental unit was related more to aesthetics than a failure of the landlord to meet the health, safety or housing standards for a residential tenancy. I accept the photographic and testimonial evidence of the landlord that the blinds were intact and functional with no major deficits during the tenancy. I find that the tenant is not entitled to be compensated for her annoyance at the unsatisfactory blinds. The tenant did not purchase new blinds because of the cost involved and therefore has no cost to recover. I dismiss the tenant's claim for damages or aggravated damages in relation to the blinds.

I find that the tenant is also not entitled to recover a cost for shelving that she installed in the rental unit. The legislation provides that a rental unit must be returned to its original state when the tenant vacates the premises. Again, it was her choice to put in shelving because she felt the shelving in the unit was insufficient. I find there is insufficient evidence to show that the landlord agreed to pay this cost. The cost of installation and any removal is to be borne by the tenant. I dismiss the tenant's claim for compensation in relation to the shelving in the rental unit.

Given my finding that the landlord's photographs show blinds suitable for use in the rental unit and I have not been provided with sufficient evidence to show that the tenant damaged the blinds in the rental unit, I also dismiss the claim of the landlord with respect to damage of the blinds by the tenant.

The tenant sought compensation for other items she claims to have added or repaired in the rental unit after she moved in including toilet roll holders and towel racks. Again, I find, based on the testimony and evidence before me that the tenant did not receive authorization from the landlord to purchase these items or to be compensated for their purchase. The tenant is not entitled to make unauthorized changes, whether they are improvements or otherwise, to the rental unit without the consent of the landlord. If the tenant had wished to have the landlord supply these items, it is incumbent on the tenant to advise the landlord and allow the landlord an opportunity to respond to the request for repairs or purchases. Again, the tenant sought to meet her own aesthetic values in adding items to the unit. I find that the tenant did not exercise caution or patience in seeking and awaiting authorization from the landlord. The tenant is not entitled to recover the cost of these household purchases.

With respect to the tenant's claim that she was not provided useable parking, I refer to section 27 of the Act gives consideration to the provision of the services and facilities related to a residential tenancy. For the tenant to be successful in claiming that she should be compensated under section 27(2) of the Act for a facility that has not been provided, she must show that parking is essential to the use of the rental unit as accommodation or that the provision is a *material term* of the agreement.

Parking is not always considered a material term of a tenancy agreement. I note that, in the case of this residential tenancy, the agreement provides for 2 parking spots. The tenant testified that, when she was unable to park in the parking spot for some reason, she would park on the street outside the residential premises therefore not strictly impeding her ability to access her residence. The tenant also did not dispute the testimony of the landlord that the tenant was able to park in the driveway of the premises but that it was difficult because the driveway was uneven.

I find that the tenant is not entitled to compensation for the lack of useable parking spaces. I find that the parking space was available but, again, lacking in the level of convenience the tenant sought. As well, I find that the tenant is not entitled to recover the cost of two auto glass repairs. I find that there was a substantial lack of information in the receipts/documentary evidence submitted by the tenant with respect to the auto glass damage and repair. I find that the tenant submitted insufficient evidence to show

that the damage to her car occurred while she was parked on the street near the rental home and that the tenant submitted insufficient evidence to show that the landlord should be responsible for the damage to her vehicle. I dismiss the tenant's claim for compensation for unusable parking as well as the cost of auto glass repair.

The tenant sought compensation for utilities. I accept the argument of the landlord that this agreement for the payment of utilities existed between the two tenants in the residential premises. However, I refer to Residential Tenancy Policy Guideline No. 1 with respect to shared utilities. That guideline states,

If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

I accept the testimony of the tenant that she was told to put the utilities in her name. The witness testified that this was suggested as a method to reduce her payments. The testimony of the tenant regarding the utilities was not disputed by the landlord: the landlord simply testified that he believed this arrangement was solely between the two tenants and did not concern him or the co-landlord.

I accept the testimony of the tenant that the other tenants did not pay their portion of the rent. There is supporting evidence in the documents and correspondence to this effect and this testimony was undisputed by the landlord. Therefore, based on the finding that the tenant was required to have the utilities in her name as part of her tenancy and given that the other tenants, subject to a different tenancy agreement did not pay their share, **the tenant is entitled to recover the amount of outstanding utilities paid to her by the landlord in the amount of \$588.00.**

I find that the tenant provided insufficient evidence that a container of coins remains in the rental unit. The tenant did not meet the requirements of section 67 of the Act in presenting evidence with respect to these missing coins. Section 67 establishes that if loss results from a tenancy, an arbitrator may order one party to pay the other for their loss. In order to claim for loss under the Act, the party claiming the loss must prove the existence of the 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.

In this case, the tenant was required to provide evidence with respect to the coins and their loss and that the loss is as a result of actions by the landlord. The tenant did not submit photographic or documentary evidence to prove the existence of the coins that

she had collected or any information to support their value. With no further evidence upon which to rely, I dismiss the tenant's claim for compensation for the coins. If the landlord finds them, he will provide them to the tenant.

The tenant also claims that the landlord agreed to pay \$114.82 for cleaning at the outset of the tenancy however the invoice for cleaning was not dated in the timeframe of the move in and the tenancy had carried on for over a year without the tenant seeking compensation. I find that there is insufficient evidence to show that the landlords agreed to pay the cleaning costs at the start of the tenancy. Therefore, I dismiss the tenant's request for cleaning costs.

With respect to the tenant's claim that she overpaid rent in September 2016, I find that she has not proven this to be the case. In fact, the evidence submitted indicates that the bank draft in the amount of the rent was "redeemed by purchaser" thereby suggesting that the person who purchased the draft (the tenant) then cashed it. Therefore, I find that the landlord has provided sufficient evidence to clearly show that the tenant failed to pay rent and therefore owes the landlords the unpaid rent amount for September 2016 (\$2500.00). I find that the landlords' documentary evidence clarifies the conflicting testimony of the parties. I find that the landlords have met the burden of proof to show that September 2016 rent is unpaid. I dismiss the tenant's application to recover the September 2016 rent as I have found no evidence of a double payment. I find that the landlord has shown the tenant's initial payment was not completed and that the secondary payment was not received. Therefore, **I find the landlord is entitled to \$2500.00 in unpaid rent.**

The tenant also sought aggravated damages as part of her application. Pursuant to Policy Guideline No. 16, aggravated damages are described as follows,

"Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

The tenant is not entitled to aggravated damages. I find that the tenant has not shown significant damage or loss nor has she shown that the landlord has either caused loss deliberately or through negligence. Aggravated damages are for very specific and serious grievances and are not appropriate for blinds with gaps and general repair

requests for laundry facilities or other regular household concerns. Therefore, I dismiss the tenant's claim for aggravated damages in all of the circumstances.

As stated above, with respect to the landlord's monetary claim of \$5,636.00 against the tenant, I dismiss the landlord's claim for \$3136.00 in damage to the window blinds. I allow the landlord's claim for \$2500.00 in unpaid September 2016 rent.

As the landlord has been partially successful in their own application and the tenant has been partially successful in her application, I find that neither is entitled to recover their filing fee.

### Conclusion

I grant the landlord a monetary order as follows,

Item	Amount
Unpaid September 2016 rent owed to the Landlord	\$2500.00
Outstanding Utility Bill amount owed to the Tenant	-588.00
<b>Total Monetary Order to the Landlord</b>	<b>\$1912.00</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: June 2, 2017

---

Residential Tenancy Branch