



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR MND MNDC MNSD FF

### **Introduction:**

Both parties and a witness attended and gave sworn testimony. The landlord said they served the Application for Dispute Resolution on the tenant by registered mail and the tenant confirmed receipt. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for unpaid rent 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.

### **Preliminary Issue:**

The landlord named the tenant's mother as a joint tenant in her Application. The mother testified she had signed no tenancy agreement and had not resided in the unit. She provided a statement from her workplace in another municipality during the relevant times that she was working there daily. The other municipality is about 5 hours distant by car so too far to commute. I find she is not a tenant and her name will not be joined to the tenant's in the Decision or Order.

### **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 were present at the hearing and were given opportunity to be heard, to present evidence and to make submissions. It was undisputed that the tenancy commenced August 22, 2016 on a six month lease to December 16, 2016 for this furnished apartment. Rent was \$1650 for the first two weeks as it was 'high season' in this resort town, then it was \$1200 a month for the remainder of the term. The tenant

asked permission to stay until December 17, 2016 due to schedules and the landlord agreed by email. She vacated on December 17, 2016. During her tenancy, she asked permission for a male friend to live in the unit also. The landlord granted permission but warned that the futon was not to be used as a daily bed. Both parties agreed that there was no move-in or move-out report although the landlord said she would have done one on December 16, 2016 but due to the tenant's request for an extra day to clean, she was unable to be present. She had to leave town to deal with a serious medical issue.

The landlord said the suite was clean and fine at move-in. The tenant's mother who helped the tenant move in agreed that the suite was clean at that time. The landlord said the suite was filthy at move-out and there were other damages.

The landlord claims as follows:

- \$556.50 for professional cleaning. The landlord said cleaners were not available over the holidays and she had to do it herself as she had a new tenant move in on January 3, 2017. However she took a video of the unit at the time and the professional company viewed the video in the spring and estimated what would be their cost. Included in the estimate was \$50 to replace a missing refrigerator shelf on a 10 year old refrigerator. When giving the tenants an estimate of costs on December 30, 2016, she emailed cleaning was \$360 for 12 hours of her time. The tenant denied it needed that much cleaning but she said she had mistakenly left some food in the refrigerator as she hurried out on December 17, 2017.
- \$78.75 for the professionals to do the estimate.
- \$135.95 for carpet cleaning; invoice in evidence
- \$250 for damage to futon which was about 4 years old. It cost about \$500 to buy a new one. The tenant agreed it came off its track but said it went back on and it was not damaged; it was reasonable wear and tear.
- \$145 for rent for the extra day the tenant stayed December 17, 2016
- \$600 for rental loss from December 18 to January 3, 2017 due to the amount of cleaning that had to be done before re-renting. The landlord said another prospect viewed it but refused it due to the condition.
- \$100 to replace the coffee maker as it was full of mould. The tenant said they never used it but the landlord said she had on request showed her how to use it.
- \$50 recovery of the fee for a Review Hearing which had to be held due to the tenant providing incorrect information when applying for the refund of the security deposit.
- \$50 for replacing missing green sheets and \$18 to replace a floor mat. The tenant said she never saw these green sheets although there was a green pillow

case. She said the floor mat was muddy because it was at the entrance but did not need replacing.

- \$100 filing fee
- \$42. For registered mail costs and \$41.75 for USB sticks for evidence.

Many documents from both parties are in evidence. The tenant questioned the dates and times of the photographs of the landlord who said they were taken within a few days of December 17, 2016 when she returned from the medical appointments. 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 landlord's evidence credible that this tenant caused some damages such as leaving the unit very dirty. Section 37 of the Act provides a tenant when vacating, must leave the unit reasonably clean and undamaged except for reasonable wear and tear. I find the weight of the evidence is that the tenant violated the Act as the unit was very dirty when she left. The video evidence supports the landlord's evidence of what she saw at the time. While the landlord provided a professional estimate based on viewing the video much later, I decline to use this for evidence of costs. The best evidence available is what the landlord told the tenants at the time by email, that is that she cleaned the unit herself for cost of \$360 for 12 hours

of work. I find the landlord entitled to compensation for her actual cleaning costs. For the same reasons I find her entitled to recover \$135.45 for carpet cleaning costs as invoiced.

I accept the evidence of the cost for replacement of the missing refrigerator shelf. Although this was a 10 year old refrigerator, I find the cost of a shelf is a repair that has to be made to make the refrigerator useable. I grant the landlord \$50 to replace it as evidenced by the cleaning quote and the landlord's research with appliance companies.

The loss of the green sheets and floor mat was not claimed on the monetary order. I find insufficient evidence in any case that the tenant took the sheets or damaged the floor mat beyond reasonable wear and tear.

In respect to the \$145 claim for rent for the extra day, I find the landlord granted the extra day by email without any mention of charge for it. As the landlord said, it was frustrating that the tenant did not use the extra day for cleaning but I find no condition attached to her grant in the emails. I find her not entitled to recover this extra day's rent.

Regarding her rental loss due to the unclean condition, I find she was able to clean the unit in 12 hours so I find much of the rental loss was more probably due to the Christmas holiday time when the tenancy ended. I find it more reasonable to grant her compensation for one week of rental loss as the weight of the evidence is that damages caused by the tenant could more probably be handled within a week. I grant her \$300 for rental loss from December 17, 2016 to December 24, 2016.

In respect to her claim for \$250 for the futon, I find insufficient evidence to conclude that the tenant damaged the futon so it needed replacement. Both parties spoke of the creaks of the futon and the landlord had to tighten bolts in it twice. Although the landlord said it was four years old, she produced insufficient evidence of when it was bought. I also have taken note that she had an Airbnb rental in the unit also according to her emails which may have increased the wear and tear on the futon. Likewise I find insufficient evidence that the actions of the tenant caused the coffee maker to fill with mould. I find it just as probable that it was left unused for 6 months as the tenant said and mould grew in it. I dismiss the landlord's claims for the futon and coffee maker for the reasons stated above.

I find the landlord not entitled to compensation to obtain a professional cleaning estimate for evidence. The parties bear the costs of producing evidence for arbitration and the arbitrator's jurisdiction is limited to recovery of the filing fee by section 72. For

the same reason, I find her not entitled to recover her costs for registered mail and USB sticks to provide evidence. However, I find the landlord entitled to recover her fee for the review hearing as this was necessitated by the tenant providing incorrect information in the original hearing regarding providing her forwarding address in writing. I also find her entitled to recover the filing fee for this Application.

**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:**

Cleaning costs	360.00
Carpet cleaning costs	135.45
Refrigerator shelf	50.00
Rental loss allowance	300.00
Filing fee for review	50.00
Filing fee for this application	100.00
Less security deposit	-600.00
<b>Total Monetary Order to Landlord</b>	<b>395.45</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 29, 2017

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Residential Tenancy Branch