



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application and amended application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order for the return of the security deposit - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

A previous decision noted on the cover page of this Decision and referenced by both Parties in their submissions, grants the Tenant return of double the security deposit. As this matter has been dealt with I dismiss the Landlord’s claim for its return.

It was noted that the application for dispute resolution and the amended application does not detail any claims for lost rental income. The Tenant acknowledges that she received a worksheet with the application and a worksheet with the amended application. The Tenant states that she reviewed the worksheets briefly and that the Tenant did not notice the lost rental claim in either worksheet.

Rule 4.2 of the RTB Rules of Procedure provides that where circumstances can be reasonably anticipated an application may be amended at the hearing. Given the Tenant’s evidence of having received and reviewed both worksheets I find that the

Tenant was reasonably given notice that a claim for rental loss was being made. As such I amend the application to include the claim for lost rental income as set out in the Introduction above.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Relevant Background and Evidence

The tenancy started on September 1, 2016 and ended on November 30, 2016. Rent of \$800.00 was payable on the first day of each month. No move-in or move-out condition report was prepared by the Landlord at the time of the inspections.

The Landlord provides photos of the unit and states that they were taken on December 3, 2017 while a witness was present.

The Landlord states that during a move-in the Tenant's moving truck drove off the driveway and over a water line causing the line to be damaged. The Landlord states that the Tenant was not aware that a water line was present and the area was not marked off to warn of a water line. The Landlord states that the Tenant was not asked to pay for the damage during the tenancy as the Landlord was not talking to the Tenant. The Landlord states that the Tenant never offered to pay for the damage. The Landlord claims \$500.00 for the repair of a water line.

The Tenant states that at the time the event occurred the Tenant felt badly and offered to pay for the repairs but that the Landlord told the Tenant it was no big deal and they would make the repairs themselves. The Tenant states that the Landlord has told her that there had been a previous leak in the water line.

The Landlord states that the Tenant left the bathroom, bedroom and hallway walls with scratch marks. The Landlord states that the unit had been freshly painted just before the tenancy started. The Landlord states that the scratches did not require filling as

they were not deep but that the areas could not be painted over in patches. The Landlord states that the paint in the hallway was peeled off. The Landlord claims her own labour costs of \$200.00 and paint costs of \$29.94, \$72.44 and \$27.50. The Tenant states that the walls were not painted before she moved in and that there were nails all over the walls at move-in. The Tenant states that no scratches were left by the Tenant.

The Landlord states that although the Tenant returned the keys to the unit the Landlord had the door locks changed for their security as they did not know if the Tenant had extra keys and the Tenant was not happy with the Landlord at move-out. The Landlord claims \$35.98 for the cost of the locks.

The Landlord states that the Tenant left the total unit unclean and that the Landlord took 8 hours to clean the unit. The Landlord claims \$200.00 for this cost and provides estimates from cleaning companies that show greater cost amounts. The Landlord provides photos of the unit. The Tenant states that she left the unit cleaner than its condition at move-in. The Tenant states that it took her two weeks at move-in to clean the unit. The Tenant states that she was only in the unit for two months and that the fridge was left in immaculate condition. The Tenant states that she only used the stove once.

The Landlord states that a 3 year old outdoor light was left damaged at move-out and required replacement. The Landlord claims \$39.99 for an outdoor light fixture and provides a photo. The Tenant states that there was no broken light fixture at move-out.

The Landlord states that a porch and kitchen door was damaged by the Tenant but that these items have not been replaced. The Landlord claims estimated costs of \$400.00 for their replacement. The Landlord states that these items were not replaced. The Landlord claims \$80.00 as the estimated cost for the replacement of screens. The Landlord states that the screens were replaced sometime in the last two months but that no receipt was provided for their costs. The Landlord claims \$800.00 for the loss of rent.

The Landlord states that there have been no other tenants as the Landlord was never going to rent the unit again and that her boys moved into the unit. The Landlord also states that another tenant was in the unit.

### Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. As the location of the water line was not marked off but located right beside a driveway, as the Tenant did not know that a water line was present and based on the undisputed evidence that the Landlord informed the Tenant at the time that the Tenant was not responsible for the costs of its repair I find that the Landlord has not substantiated that the Tenant knowingly and with foresight or negligently caused the damage to the water line. I therefore dismiss this claim.

As the Landlord changed the locks for their own security, as the Tenant returned the keys at the end of the tenancy, and as there is no evidence that the Tenant caused any damage to the locks, I find that the Landlord has not substantiated that the Tenant caused the locks to be damaged or to require replacement. I dismiss the claim for costs to change the locks.

As the Landlord's evidence in relation to an ensuing tenancy was contradictory I accept the Landlord's first evidence that there was no intention to rent the unit out after the end of this tenancy and as a result I find that the Landlord has not substantiated that the Tenant caused any lost rental income. I therefore dismiss this claim.

As the Landlord has not replaced the exterior doors and as this is a future event that may or may not happen I find that the Landlord has failed to substantiate that the costs

claimed were incurred or will be incurred and I dismiss the claims for costs to replace doors. As the Landlord did not provide a receipt for the costs of the screens I find that the Landlord has not substantiated that the costs claimed were incurred and I dismiss this claim.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. As there is no evidence of the state of the unit at move-in other than each Party's plausible oral evidence I find that the Landlord has not substantiated that the unit was reasonably clean at move-in. For this reason it may be that the unit was cleaner at move-out and that Landlord's costs claimed are therefore excessive. However given the photos of the unit and the lack of any additional cleaning evidence from the Tenant I find that the unit was not left sufficiently clean and the Landlord has substantiated a nominal amount of **\$50.00** for the state of the unit at move-out.

Given the photo of the light fixture and accepting the Landlord's evidence of the photos being taken with a witness present I find that the Landlord has substantiated on a balance of probabilities that the Tenant damaged the light. I find that the Landlord is therefore entitled to the costs claimed of **\$39.99**.

As the Landlord's claims have met with minimal success I decline to award recovery of the filing fee leaving a total entitlement of **\$89.99**.

#### Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$89.99**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: July 28, 2017

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Residential Tenancy Branch