



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNDC FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (the "Application") seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that was presented during the hearing and that met the requirements of the Rules of Procedure. However; only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither party raised any concerns regarding the service of documentary evidence.

### Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

### Background and Evidence

The parties confirmed that there was no formal written tenancy agreement between the parties and that the landlord had instead relied upon the tenant's application for tenancy instead. As a result, a verbal month to month tenancy began on April 1, 2009 and ended on April 30, 2016 when the tenant vacated the rental unit. Originally monthly rent in the amount of \$1,200.00 was due on the first day of each month and was increased during the tenancy to \$1,300.00 by consent of the parties in May of 2013 which included Telus

service according to the parties as of May 2013. The parties confirmed that the tenant's security deposit has already been dealt with in a previous decision.

The landlord's monetary claim of \$1,594.04 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Door replacement	\$300.00
2. Clean up and salvage	\$240.00
3. Bi-fold doors and moldings	\$150.00
4. Machine shed shelving removal and replacement	\$100.00
5. Waste bin disposal partial fee	\$50.00
6. Unpaid water bills	\$222.72
7. Unpaid Telus TV for March 2016	\$109.70
8. March electricity and gas	Electricity \$141.62 Gas \$138.00
9. April electricity and gas	Electricity \$45.00 Gas \$97.00
<b>TOTAL</b>	<b>\$1,594.04</b>

The tenant vehemently denied all portions of the landlord's monetary claim. The parties agreed that the landlord did not complete a move-in condition inspection report at the start of the tenancy or a move-out condition inspection report at the end of the tenancy. As a result, I will deal with the landlord's failure to complete those reports at the end of this decision.

Regarding item 1, the landlord has claimed \$300.00 for a door replacement. The landlord provided one blurry photo at the end of the tenancy and confirmed that he did not submit any photos of the door at the start of the tenancy. The tenant denied making any holes in any of the rental unit doors and that the particular door shown in the photo was sealed with plastic during the tenancy. The landlord confirmed that the door had been sealed with plastic for energy saving reasons during the tenancy. The landlord affirmed that the tenant put a power cord through a hole in the door. The tenant denied that she made a hole in any doors and that the power cord referred to by the landlord went through an open window and not a door. The landlord testified that he sold the home in April 2016 and that he did not fix the door.

Regarding item 2, the landlord has claimed \$240.00 comprised of 8 hours of cleaning at \$30.00 per hour related to cleaning up the chicken coop area which was dismissed during the hearing as the tenancy did not end until April 30, 2016. I find that by the

landlord cleaning the property of the rental unit before the tenant had the chance to clean it before the end of tenancy date resulted in the landlord's cleaning being premature and resulted in the landlord extinguishing the tenant's ability to clean it herself and that the tenant is not liable as a result for the landlord's premature actions.

Regarding items 3 and 4, the landlord has claimed a total of \$250.00 without providing any before photos to support what items 3 and 4 looked like prior to the end of the tenancy. As a result, these portions of the landlord's claim were dismissed during the hearing due to insufficient evidence, without leave to reapply.

Regarding item 5, the landlord has claimed \$50.00 for a portion of the cost he paid to have a large waste bin placed on the property. The landlord admitted that the cost of the waste bin was not discussed and that he did not have the tenant's agreement that she would pay anything towards the cost of the large waste bin before the landlord gave permission to the tenant to dispose some of her items in towards the end of the tenancy. Given the above, this portion of the landlord's claim was dismissed during the hearing due to insufficient evidence, without leave to reapply.

Regarding item 6, the landlord has claimed \$222.72 for unpaid water bills. The tenant testified that water was always included in her monthly rent. The landlord referred to the Application for Tenancy document, which reads in part:

"Rental includes utilities to maximum \$2400.00 per year. if utilities rise about this amount the difference will be added to rent."

[Reproduced as written]

The portion above was not initialed by the landlord or the tenant and the landlord confirmed that he did not submit any supporting documentary evidence to support that the water bills were more than \$2,400.00 for the year 2016. As a result, this portion of the landlord's claim was dismissed during the hearing due to insufficient evidence without leave to reapply.

Regarding item 7, the landlord submitted a Telus bill which did not match the rental unit address. As a result, this item was dismissed during the hearing due to contradictory evidence without leave to reapply.

Regarding items 8 and 9, and consistent with item 6 above, these portions of the landlord's claim for unpaid electricity and gas utilities were dismissed during the hearing

without leave to reapply as the landlord failed to provide supporting evidence that the amounts of the respective utilities exceeded \$2,400.00 for the year of 2016. In addition, I am not satisfied that the term on the Application for Tenancy was agreed upon by the parties as neither party initialed the term.

### Analysis

Based on the documentary evidence, the oral testimony of the parties, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. 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 what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

After carefully considered all of the evidence before me I find the landlord's claim must fail in full. I find that all items of the landlord's claim fail to meet any and all of the four parts for the test for damages or loss and that there is no merit to the landlord's monetary claim. As a result, I dismissed the landlord's entire monetary claim in full, without leave to reapply due to insufficient and contradictory evidence.

**I caution** the landlord to comply with sections 23 and 35 of the *Act* in the future which require that the landlord complete in writing both an incoming and outgoing condition inspection report with the tenant.

I do not grant the landlord the recovery of the cost of the filing fee.

Conclusion

The landlord's claim fails.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 10, 2017

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Residential Tenancy Branch