



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Code(s): MND, MNR, MNSD, MNDC, FF

This hearing dealt with a landlord's request for a Monetary Order, as amended, against the deceased tenant's estate for damage to the rental unit; unpaid rent; damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party. The hearing was held over three dates and two Interim Decisions were issued and should be read in conjunction with this decision.

I was provided a considerable amount of oral and written submissions and evidence, all of which I have considered in making my decision; however, with a view to brevity in writing this decision, I have only captured or summarized the most relevant facts, evidence and submissions.

### Issue(s) to be Determined:

1. Has the landlord established an entitlement to compensation from the tenant for the amounts claimed?
2. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The tenancy started January 1, 2011 and the tenant paid a security deposit of \$350.00. The rent was originally set at \$700.00 payable on the first day of every month as evidenced by the tenancy agreement provided as evidence. The tenancy agreement was for a fixed term of one year with a vacate clause. A subsequent tenancy agreement was not provided as evidence; however, it is undisputed that the tenant remained in possession of the rental unit at the end of the tenancy the tenant had been paying rent of \$820.00 per month. The landlord stated that at the end of the tenancy the tenancy was on a month to month basis and rent included utilities and furnishings.

The landlord alluded to a second tenancy agreement in his testimony; however, he did not provide a copy of one as evidence. The respondent pointed out that the respondent may be prejudiced without being provided a copy of the subsequent tenancy agreement.

Below, I summarize the key sequence of events at or around the time the tenancy ended.

On July 25, 2016 the tenant died in bed in the rental unit; however, the tenant was not discovered until the landlord found him on August 1, 2016. The landlord contacted the police and the police contacted the tenant's sister (herein referred to as LJ) who is the personal representative of the deceased tenant's estate as named in this decision. Shortly after LJ was notified of her brother's death, LJ came to the rental unit and removed some of the tenant's personal possessions. LJ paid the landlord rent for the month of August 2016. LJ returned a second time a couple of days later and retrieved some more of the tenant's personal possessions, except the tenant's vehicle because the landlord refused to give LJ the keys. The police intervened and the tenant's vehicle was eventually towed off the property.

On August 9, 2016 the landlord arranged for disposal of the furniture in the rental unit and the tenant's possessions that remained in the rental unit with the consent of LJ. The landlord stated that after August 9, 2016 there was no more communication with LJ.

On August 12, 2016 the landlord arranged to have the rental unit cleaned to make the rental unit sanitary. On August 13, 2016 the landlord obtained quotes for painting the unit but the painting was not done until October 15, 2016. On August 19, 2016 arrangements were made for duct cleaning.

The landlord stated the tenancy ended in frustration, due to the death of the tenant; however, the landlord also posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on September 3, 2016. Rent was not paid for September 2016. The landlord stated that he did not take possession of the rental unit until October 1, 2016. The rental unit did not have keys; rather, the unit was equipped with a keyless lock that had a passcode.

The landlord stated that he advertised the unit for rent in November 2016 but that the next tenancy did not commence until February 1, 2017. The landlord attributed to the difficulty in finding replacement tenants to the winter months and the steep driveway and no yard.

Below, I have summarized the landlord's monetary claims against the deceased tenant's estate and the responses of LJ and her lawyer.

*Junk Removal – \$1,334.80*

The landlord disposed of all contents of the rental unit, including the furniture that had been provided for the tenant's use under the tenancy agreement and the tenant's possessions that LJ did not take or want. The landlord stated the furniture was disposed of because it was torn and smelled of smoke. Also, the tenant had died bed so the bed and linens were disposed of for sanitary reasons. The furniture was approximately 20 years old that the landlord received from his grandparents.

The respondent was of the position that the tenant is not responsible for disposing of the furnishings. The furnishings appeared worn and showing signs of normal wear and tear after being used for many years including a lengthy tenancy. It is reasonable to expect that the landlord would have to clean, dispose or even replace furnishings of that age and the end of a lengthy tenancy. The tenant was a smoker but he smoked outside. The respondent conceded; however, that some of the tenant's possessions were disposed of and the disposition of the bedroom furnishings is attributable to the death of the tenant in the bedroom and the respondent is willing to pay a portion of the disposal costs, of approximately \$500.00.

*Cleaning -- \$527.75*

The landlord requested compensation to clean the rental unit and the respondent agreed to compensate the landlord the amount requested during the hearing.

*Duct and furnace cleaning – \$271.95*

The landlord submitted that the furnace and ducts needed to be cleaned to remove the smell associated to the death of the tenant that did or was likely to permeate the entire house if the furnace and ducts were not cleaned. The landlord acknowledged that the ducts were last cleaned in 2007.

The respondent was not agreeable to paying for this service. The respondent pointed to Residential Tenancy Policy Guideline 1 where it provides that a landlord is responsible for servicing and cleaning furnaces and their filters, cleaning heating ducts and ceiling vents. Moreover, the furnace and ducts services provided included ducts in the entire house and not just the rental unit. In the respondent's written submission,

the respondent takes the position that if the tenant is held responsible for cleaning the ducts, only the cost attributable to the rental unit should be paid by the tenant's estate.

*September 2016 rent -- \$820.00*

The landlord argued that upon the death of a tenant the estate takes over the tenancy. The rental unit could have been used by the estate after the tenant's death. The landlord did not receive a notice to end tenancy from the tenant or the estate and it was the landlord that served a Notice to End Tenancy for unpaid rent on September 3, 2016. The landlord had the unit painted in October 2016 and advertised the rental unit in November 2016. A new toilet was installed in January 2017. The unit was not re-rented until February 1, 2017.

The respondent was not agreeable to compensate the landlord for rent for September 2016. The tenant died intestate, or without a will, and LJ informed the landlord she was not legally entitled to act as the legal representative for the deceased. LJ did not become the personal representative for the estate until February 2017. LJ was of the understanding that the tenancy was at an end due to the death of the tenant; the landlord took possession of the rental unit by removing furnishings and having the unit cleaned. However, the unit was without a working toilet for several months afterward. The respondent's lawyer argued the tenancy ended due to frustration and pointed to Residential Tenancy Policy Guideline 34: *Frustration*. Alternatively, the respondent's lawyer argued that the tenancy came to an end due to vacancy. With the death of the tenant and the lack of a legal representative for the estate a tenant's notice to end tenancy could not be given. Finally, if it is found that LJ was the representative of the estate without court appointment, LJ ended the tenancy by giving the landlord oral notice at the beginning of August 2016 and there was no indication given to the landlord that she would occupy the rental unit or continue the tenancy.

*Painting -- \$2,650.00*

The landlord seeks compensation to repaint the rental unit due to the smells of smoke and those attributed to the death of the tenant in the rental unit; and, to cover patches of several holes in the walls.

The respondent had submitted, by way of the written submission, that the rental unit was in need of repainting given the length of the tenancy and pointed to Residential Tenancy Branch Policy Guideline 1 which provides that landlords are expected to paint at reasonable intervals. Accordingly, this expense is one that should have been reasonably expected by the landlord.

During the hearing the landlord claimed to have painted the unit in March 2015. The landlord explained that he had been painting his personal residence upstairs at that time and proceeded to repaint the rental unit. The respondent's lawyer pointed out that the landlord made this submission only after receiving the respondent's written submission and the landlord had not provided any evidence to support his position that he had painted the unit during the tenancy or in March 2015.

The respondent had pointed out that there was no move-in or move-out inspection report provided by the landlord.

*Landlord's personal time -- \$1,600.00*

The landlord submitted that he spent a considerable amount of his own time dealing with the aftermath of the tenant's death because the estate did not; including, dealing with the police, cleaning and sanitizing the unit, removal of possessions and furnishings, dealing with contractors and completing paperwork. The landlord is seeking compensation for 40 hours of time at \$40.00 per hour. The landlord provided a detailed breakdown of the time he spent on various tasks.

The respondent recognizes that the landlord spent some of his personal time dealing with the passing of the tenant in the rental unit and the respondent is willing to compensate the landlord a more reasonable hourly rate of \$15 - \$20 per hour. However, some of the tasks performed by the landlord are to be expected at the end of a tenancy. Upon review of the landlord's breakdown, the respondent was prepared to compensate the landlord for 12.5 hours.

The landlord countered that \$15.00 is too low and that nobody would have done what he did for that amount.

*Furnishings -- \$3,500.00*

The landlord disposed of the furnishings provided to the tenant under the tenancy agreement after the tenant died. The landlord described the furniture as being approximately 20 years old that he received from his grandparents but that it was in good condition when it was provided to the tenant. However, at the end of the tenancy it had holes, stains and smelled of smoke and the mattress was saturated with bodily fluids.

The landlord explained that he obtained a value for the furnishings by looking at used furniture on-line. The landlord did not provide a listing of furniture or evidence of the value of the items such as print-outs from the internet.

The respondent acknowledged the mattress had to be disposed of due to the death of the tenant on the bed but was of the position the value of the furnishings was very little considering the age of the furniture and that the mattress had been used for several years. The respondent also pointed out that the landlord did not provide a listing of the furniture or evidence to show the value is as claimed and the amount of compensation requested cannot be verified.

*Damage -- \$1,000.00*

The landlord seeks compensation to replace the toilet, bathroom vanity and repair the hinge plate on the kitchen cupboard. The toilet was described as being too disgusting filthy to clean and replacement was appropriate. The vanity had the drawers and doors ripped out. The cupboard door in the kitchen required new hinge plate(s).

As for the amount requested, the landlord stated that the toilet cost \$250.00 and the balance of the claim is for his labour to remove and install the toilet and vanity and repair the kitchen cupboard. A new vanity was obtained at no cost from the internet. The landlord stated that he spent approximately 20 hours making the repairs and seeks compensation at \$40 per hour.

Initially, the landlord described the toilet and vanity as being 15 years old. After I informed the landlord that it is often appropriate to reduce replacement cost by depreciation, the landlord changed his testimony to say the vanity was installed in 2007.

The respondent pointed out that the landlord did not provide documentary evidence to support the amount claimed and there were no condition inspection reports documenting the condition of the property at the start of the tenancy. However, the respondent conceded during the hearing that the estate will take responsibility for the toilet replacement; however, the amount claimed is excessive. The respondent is willing to pay \$100.00 to \$250.00 for replacement of the toilet. The vanity, at 15 years old, was nearing the end of its life and due for replacement.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to each of the landlord's claims against the tenant

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 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.

In this case, the landlord has the burden of proof since he is the applicant. The burden of proof is based on the balance of probabilities. In most cases, a landlord and a tenant have an opportunity to be heard in a dispute resolution proceeding. However, in this case, the tenant is deceased and his personal representative has very limited knowledge of what transpired in the rental unit or with the tenancy before the tenant died. As such, I find the respondent is prejudiced since the landlord's testimony as to what transpired during the tenancy cannot be confirmed or disputed. Accordingly, I find it fair and appropriate in these circumstances that the landlord produce corroborating evidence to support his version of events during the tenancy.

Also of consideration is that awards are intended to be restorative. Where building element is so damaged it required replacement it is often appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

### *Junk removal*

Based on the receipts for junk removal, the photograph of items in the garbage bin provided by the landlord, and undisputed submissions of both parties, I the junk removal costs reflect disposal of both the tenant's personal possessions and the landlord's furniture that had been provided to the tenant under the tenancy agreement.

The photographs of the furniture depict furniture that appears quite old, and I suspect the furniture is older than 20 years based upon the pattern, colour and castors seen on the furniture. In any event, furniture has a limited useful life and policy guideline 40 provides that the average useful life of furnishings is 10 years. Accordingly, I am of the view the furniture provided under the tenancy agreement was at the end of its useful life given its age. As an owner of furniture the owner must expect that at some point they will have to dispose of it. Accordingly, I do not hold the tenant responsible to pay for the cost of disposal of the landlord's furniture.

The costs of junk removal related to the tenant's personal possessions vs. the landlord's furniture is not readily determinable and I find the respondent's proposal to pay \$500.00 to be very reasonable considering the furniture is likely of significant weight.

In light of the above, I award the landlord \$500.00 for junk removal.

### *Cleaning*

The respondent agreed to pay the landlord for the cleaning cost and I award the landlord \$527.75 as requested.

### *Furnace and Duct cleaning*

I accept that cleaning the furnace filter and ducts was appropriate at the end of the tenancy and may have been prudent to do so given the circumstances in this case. However, I note that the receipt for this service did not indicate that any extra cleaning effort or cost was attributable to the death in the rental unit. Further, Residential Tenancy Policy Guideline 1 provides that it is a landlord who is responsible for servicing a furnace and cleaning filters, ducts and vents; and, the landlord had not cleaned the furnace or ducts since 2007. Accordingly, I am of the view that this service was due in any event given the length of time since the last cleaning.

Since the furnace and duct cleaning was likely required in any event and there is no apparent extra cost associated to the tenant's death, I deny the landlord's request to recover this cost from the tenant.

### *September 2016 rent*

Section 1 of the Act provides that a tenant includes the estate of a deceased tenant. The death of a tenant and the ending of the tenancy is not a simple determination based on death of the tenant alone, and the circumstances of each case must be considered in determining when the tenancy ends. For instance, a tenant may reside in a rental



unit with a spouse (not named as a tenant) and it is possible that the tenancy continue because the unit remains occupied by the tenant's spouse and the rent continues to be paid. In other situations, the children of a deceased tenant may wish to continue the tenancy after the death of a parent until such time they have the opportunity to sort through and remove their parent's possessions and then give notice to the landlord when they are ready to return possession of the rental unit. In these two examples, the tenancy agreement is not frustrated even though the tenant died. Other situations may warrant a finding of frustration or an immediate end of tenancy due to a deceased tenant having no survivor or beneficiaries or ability to pay rent or give notice and finding the tenancy frustrated may be applicable.

In the case before me, I find there is no evidence to suggest that LJ communicated to the landlord that she had any intention of continuing the tenancy after the death of the tenant.

Much of the dispute between the parties on this matter revolved around determining when the tenancy ended. The landlord was of the position the tenancy ended in September 2016 and the respondent was of the position the tenancy ended in August 2016. Section 44 of the Act provides many ways a tenancy may end. One way a tenancy is ended is upon vacancy or abandonment of the rental unit. In this case, I find the most straightforward and undisputed facts point to the tenancy ending on August 9, 2016 as this is the date the tenant's personal possessions were removed from the rental unit, with LJ's consent, and the furnishings provided to the tenant were disposed of and not replaced. Therefore, I find that as of August 9, 2016 the rental unit was vacated and the tenancy ended.

The vacancy of a rental unit in a particular month does not mean necessarily mean the landlord is not entitled to recover loss of rent from a tenant for the subsequent month. A common example of this concept is where a tenant abruptly moves out of a rental unit during the month without giving the landlord any notice of such. In that case, the tenant may still be held responsible for paying for the subsequent month's rent due to lack of adequate notice. Another example of claiming loss of rent is where a tenant leaves the rental unit in a condition that is not clean and is damaged. In this case, the tenant did not give notice to end tenancy in July 2016 to end the tenancy at the end of August 2016; the tenant was already deceased at the time of vacancy; LJ did not have the legal authority to represent the tenant's estate yet she was removing the tenant's personal property; the unit required significant cleaning before the unit could be shown to prospective tenants and some repairs due to the tenant's actions depriving the landlord of a full month of notice to find replacement tenants; however, the landlord also

benefited from early possession of the unit in August 2016 and the landlord delayed in having the unit repainted.

Considering all of the above factors, I find it appropriate to award the landlord the equivalent of one-half of the monthly rent in satisfaction of his claim for loss of rent, or \$410.00.

### *Painting*

As provided in Residential Tenancy Branch Policy Guideline 1, landlords are expected to paint at reasonable intervals and policy guideline 40 provides that the average useful life of interior paint is four years.

This tenancy was 6.5 years in duration. If the unit was not repainted during the tenancy I find the landlord should have expected that repainting was required due to the age of paint. If the unit was last painted within four years prior to the tenant's death, the tenant may be held responsible for some painting costs.

The landlord made no written submissions in filing his claim and did not provide evidence to corroborate his position that he painted during the tenancy. Rather, the landlord made submissions that he painted the rental unit during the tenancy after receiving the respondent's written submission that pointed to the age of the paint.

As I explained earlier in this analysis with respect to the landlord's burden of proof and the inability of the tenant to dispute or confirm the landlord's assertions, given the lack of corroborating evidence, I find I am sceptical that the landlord painted the unit during the tenancy as this is not common place and would have required more effort with the furnishings and the tenant's possessions in the rental unit. Therefore, I reject the landlord's assertion that he repainted the unit during the tenancy.

Having rejected the landlord's assertion that he repainted the unit during the tenancy, I find the rental unit was likely in need of repainting given the length of time it had been since it was last painted. Therefore, I dismiss the landlord's request to recover repainting costs from the tenant.

### *Landlord's personal time*

The landlord's listing of time spent performing various tasks after the tenancy ended includes time spent obtaining quotes for painting, furnace and duct cleaning and garbage disposal, much of which I dismissed as being costs attributable to the tenant.

Accordingly, the time spent obtaining quotes for such would not be recoverable from the tenant.

As pointed out by the respondent's lawyer, a landlord should expect to perform some tasks and spend some personal time managing the end of a tenancy as an ordinary cost of doing business as a landlord. I accept that position to be reasonable, especially when I note the landlord included in his claim time spent preparing this claim, speaking with legal counsel and organizing receipts and paperwork which are not recoverable costs under the Act.

In light of the above, I find the respondent's proposal to compensate the landlord for 12.5 hours to be a reasonable approximation of the extra effort the landlord made to deal with the death of the tenant in the rental unit. The landlord did not provide support for the hourly rate of \$40.00 and I find the respondent's proposal of \$20.00 more reasonable. Therefore, I award the landlord \$250.00.

### *Furnishings*

As I stated under the section of *Junk Removal*, I am of the view that the furniture was at least 20 years old and the furniture was likely at or near the end of its useful life. Further, in the absence of a listing of the furnishings and evidence to support the value ascribed by the landlord, I find the landlord has not sufficiently demonstrated that the furniture had a value of \$3,500.00. Therefore, I dismiss the landlord's claim to recover that amount from the tenant.

### *Damage*

The landlord did not provide evidence to corroborate the amount claimed, such as a receipt for the toilet, or a detailed breakdown of the hours he spent performing various repair activities. The landlord stated that he spent \$250.00 on a new toilet and time spent installing the toilet. The respondent was willing to compensate the landlord up to \$250.00 for a replacement toilet and I find that to be reasonable considering the former toilet had several years of wear and tear. Therefore, I award the landlord \$250.00 for the purchase and installation of a replacement toilet.

As for the vanity, the landlord provided changing testimony as to its age. Upon review of the photograph of the vanity, I find it is more likely that the cabinet is closer to 15 years old, if not more, than 9 years old when I take into consideration the style of the cabinetry, which appears painted over, and the exposed hinges, and the handles. Policy Guideline 40 provides that cabinetry has an average useful life of 25 years. As

such, I accept that there may have been slightly premature need to replace the cabinet due to damage. The landlord acknowledged acquiring a replacement vanity at no cost; however, I accept that labour would have been involved to remove and install the replacement vanity. Unfortunately, the landlord did not provide a description of how many hours he spent doing so. Therefore, I provide the landlord with a nominal award of \$50.00.

As for the hinge on the kitchen cabinet, I find the photograph of the outside of the cabinet door does not show the nature of the damage or repair required. I find I am unable to determine whether the need to install a hinge plate is the result of wear and tear over a number of years or damage. Nor, am I able to determine how much time the landlord spent performing this repair. Therefore, I find this portion of the damage claim is not sufficiently established and I make no award for the hinge repair.

*Filing fee, Security Deposit and Monetary Order*

The landlord was partially successful in this application and I order the parties to share in the cost of the filing fee. Therefore, I award the landlord recovery of one half of the filing fee, or \$50.00.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord in this decision.

In light of all of the above, the landlord is provided a Monetary Order to serve and enforce upon the respondent, calculated as follows:

Junk removal	\$ 500.00
Cleaning	527.75
September 2016 loss of rent	410.00
Landlord's personal time	250.00
Damage	300.00
Filing fee (one-half)	50.00
Sub-total	\$2,037.75
Less: security deposit	<u>(350.00)</u>
Monetary Order	\$1,687.75

Conclusion

The landlord is authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,687.75 to serve and enforce upon the tenant.

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 21, 2017

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Residential Tenancy Branch