



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes          MNDC, MND, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") seeking monetary compensation for breach of the Act, regulation or tenancy agreement, loss of rent, and damage to the rental unit as well as authorization to retain the security deposit and to recover the application filing fee from the tenant.

Both the landlord and the tenant attended and were given a full opportunity to be heard, to present affirmed testimony and documentary evidence, to make submissions and to respond to the submissions of the other party.

Service of the landlord's application, notice of hearing, and evidence were not at issue. The tenant did not submit any evidence.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation?

If so, is the landlord entitled to retain the security deposit?

Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

There was a written tenancy agreement in evidence recording a tenancy starting March 1, 2008. The tenant advised that another agreement had been entered between himself and the landlord personally when she took over from a property management company. That agreement was not in evidence but was on substantially the same terms. Monthly

rent of \$1,375.00 was due on the first of the month and a security deposit of \$687.50 was paid at the beginning of the tenancy and remains in the landlord's possession

Both parties agreed that the tenancy ended on December 31, 2017. The landlord said that this was because she no longer wanted the tenant to sublease and therefore gave written notice that the tenancy would be ending on that date.

The landlord further testified that the tenant left belongings behind. Closets were still full of clothes and cupboards were full of kitchen ware. Photographs were provided in support.

The landlord also testified that he did not return both of the keys until February and that the unit was unclean and uninhabitable until the end of February. Accordingly, she said, it was not until March 1 that she could begin showing the rental unit. She secured a new tenant for April, but claims only for loss of rental income for January and February.

The landlord also claims for cleaning, cleaning supplies, repairs, lightbulbs, and the purchase and installation of a new bathroom vanity. The vanity was approximately eight years old. The landlord testified that the company who replaced the vanity advised that the old one appeared to have been broken at the stress point because of a large amount of weight, perhaps from someone standing on it to change a lightbulb.

The landlord also claims for the cost of a tank of gas to cover her transportation while attending to repairs, and for the cost of parking for the tradesperson. Lastly, she claims for the cost of hydro for the month of January. All of the landlord's monetary claims are supported with receipts.

The landlord testified that she replaced the very soiled carpet with flooring and repainted. However, she does not claim for these costs. The landlord advised that all of the repairs and changes set out above were the only "renovations" undertaken.

The tenant's account is different. He says that the landlord asked him to vacate so that she could renovate and substantially raise the rent and that he and the landlord agreed that he would then rent the unit at an increased rent. He testified that they also agreed that he would assist the landlord with the renovations and that this is why he did not remove all of the items in the closets and cupboards and why he did not clean or return both of the keys. The tenant further testified that it was not until the third week of January that the landlord told him that she did not want to continue the tenancy after the renovations.

The tenant argued that he should not be responsible for loss of rental income at all because the landlord had not anticipated receiving rent over the months that she would be renovating. The tenant said that he had not submitted any evidence in part because the agreement he had with the landlord was oral and that the relationship was informal, which is why there was no official notice to vacate.

At the end of the hearing the tenant acknowledged that he was subleasing the rental unit in question to other renters.

Although this tenancy began in 2008, the landlord took over from a property management company around 2010, and she was unable to ascertain whether there had been a condition inspection report at move-in because those reports are archived. There was no condition inspection report at move-out. The landlord said that this was because the tenant was not responsive. The landlord did not send a Notice of Final Opportunity to Inspect as required by the Act and regulation.

The tenant provided his forwarding address in writing to the landlord for return of the security deposit after the landlord filed this application.

### Analysis

Sections 7 and 67 of the Act establish that losses arising out of breach of the Act, regulation, or tenancy agreement are compensable by the other party. I accept that the landlord has lost rental income because the tenant failed to vacate on December 31, 2017, as agreed and because of the state of the rental unit at the end of the tenancy.

At the same time, the landlord is required to make reasonable efforts to mitigate her losses. As I accept the landlord's testimony that the parties agreed that the tenancy would end on December 31, 2016, I find that the landlord could have changed the locks, removed the remaining belongings, cleaned, and repaired over the month of January. I further find that she could have advertised the unit during that time, and had the unit rented for February 1, 2017. Accordingly, I award the landlord only one of the two months of loss of rental income claimed.

I award the landlord the other amounts claimed as set out below. I do not award the cost of gas, which I consider the cost of doing business as a landlord. As the vanity was approximately 8 years old, and Residential Policy Guideline #40 sets the "useful

life” of items such as tubs and sinks at 20 years, I consider that the vanity was 40% through its “useful life” and award only 60% of the cost of the replacement vanity.

Cleaning	\$440.00
Cleaning supplies and replacement sink strainers	\$229.78
Cleaning supplies, replacement bathroom fixtures	\$174.34
Repairs by handyman	\$183.75
Replacement vanity (60% of \$472.00)	\$283.20
Light bulbs	\$22.15
Vanity installation and plumbing	\$360.40
Plumber's parking fee	\$11.00
Replacement fridge glass	\$28.00
Replacement dryer knob	\$50.81
Hydro for January	\$15.63
Cleaning supplies and screws	\$13.19
<b>Total cleaning and repair</b>	<b>\$1,812.25</b>

As the landlord's application is successful, she is entitled to recover the application filing fee of \$100.00 from the tenant.

The landlord still holds the tenant's security deposit. Over the period of this tenancy interest of \$8.62 has accrued on the deposit. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award. (Although the landlord has extinguished her right to claim against the security deposit for damages to the rental unit because she has not met her obligations around a move-out condition inspection report, I authorize the landlord to deduct lost rent against the security deposit.)

### Conclusion

The landlord's application is successful. I issue a monetary order in favour of the landlord on the terms set out below, which allow the landlord to retain the security deposit and recover the application filing fee.

Loss of rental income (January)	\$1,375.00
Cleaning, repair, materials	\$1,812.25
Application filing fee	\$100.00
Less security deposit (inclusive of interest)	-\$696.12
<b>TOTAL</b>	<b>\$2,591.13</b>

The landlord is given a formal order in the above terms and the tenant must be served with a copy of this order as soon as possible. Should the tenant fail to comply with it, it may be filed in the Small Claims division of the Provincial 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 s. 9.1(1) of the Act and is final and binding under s. 77 unless otherwise indicated in the Act.

Dated: August 18, 2017

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Residential Tenancy Branch