



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF

### Introduction

On May 8, 2017, the Landlord submitted an Application for Dispute Resolution seeking a order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, Regulation, or tenancy agreement. The Landlord is seeking a monetary order in the amount of \$4,078.03 for damage; cleaning and repairs to the rental unit and a loss of rent. The Landlord is also seeking to recover the cost of the filing fee. The matter was set for a conference call hearing.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me 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.

### Issues to be Decided

- Is the Landlord entitled to compensation for damage or loss under the Act, Regulation, or tenancy agreement?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy began as a one year fixed term tenancy that continued thereafter as a month to month tenancy. Rent in the amount of \$1,150.00 was due by the first day of each month. The Tenant paid the Landlord a security deposit of \$600.00. The Tenancy ended on June 30, 2016.

The Landlord is seeking compensation for the following items:

|                                    |            |
|------------------------------------|------------|
| Loss of Rent                       | \$1,200.00 |
| Garbage removal                    | \$300.00   |
| Purchase and installation of door  | \$153.00   |
| Purchase and installation of locks | \$186.57   |
| Wall repair and repainting         | \$1,575.00 |
| Cleaning                           | \$300.00   |
| Electric stove                     | \$280.00   |
| Pictures and photocopies           | \$83.46    |

During the hearing the Landlord withdrew his claim for compensation for the electric stove.

#### Loss of Rent \$1,200.00

The Landlord testified that the Tenant failed to give proper written notice to end the tenancy. He testified that the unit was left dirty and damaged and he did not rent the unit out for the month of July 2016, and suffered a loss of one month's rent.

The Landlord provided a copy of a 1 Month Notice To End Tenancy For Cause dated May 9, 2016, with an effective date of June 30, 2016. The Landlord provided color photographs taken of the rental unit at the end of the tenancy in support of his testimony that the rental unit was left dirty and damaged.

In response, the Tenant testified that the Landlord issued a notice to end tenancy. The Tenant testified that they moved out on the effective date of the Notice in accordance with the notice to end tenancy.

The Tenant testified that some of the damage referred to by the Landlord was pre-existing when they moved into the rental unit. The Tenant testified that the house was in shambles and there were scuffs on the walls and marks on the floors.

The Tenant testified that the Landlord failed to perform a move in inspection and a move out inspection with them.

In response, the Landlord acknowledged that he did not perform a move in or move out inspection with the Tenants.

#### Garbage Removal \$300.00

The Landlord testified that after the Tenants moved out, there was garbage left behind in the rental unit. The Landlord referred to his photographic evidence showing garbage in the rental unit. The Landlord testified that he paid for the removal and disposal of the Tenants' garbage and is seeking to recover the amount of \$300.00.

In response, the Tenants testified that they left a bag of garbage and a dresser behind when they left. They testified that they left a few children's toys behind and reached an agreement with the Landlord to pick the items up later in July. They testified that when they came to retrieve the items, the Landlord had disposed of them. The Tenants testified that the television shown in the Landlord's photograph was not theirs and was in the unit when they moved in.

Door Purchase and Installation    \$153.00

The Landlord testified that the Tenants broke a lock on a door and the Landlord replaced the door. The Landlord did not provide any photographic evidence of damage to the door or lock.

The Tenant testified that he replaced a door in the main bedroom during the tenancy. He testified that the bedroom doors did not have locks on them when they moved into the rental unit.

Lock Purchase and Installation    \$186.57

The Landlord testified that the Tenants failed to return the keys to the rental unit at the end of the tenancy. The Landlord testified that he purchased a lock at a cost of \$61.57 and is claiming for the purchase and labour to install the lock. The Landlord testified that he replaced locks on the main entry door; the sundeck door; and the bedroom doors. The Landlord provided a receipt for \$61.57 dated July 13, 2016.

The Tenants testified they they returned the key to the main entry door on July 15, 2017. They testified that the bedrooms never had locks and they never had a key to the sundeck door.

Wall Repair and Repainting        \$1,575.00

The Landlord testified that he needed to paint the interior walls of the rental unit due to damage done by the Tenants. The Landlord testified that it cost \$1,575.00 for materials

and labour to prepare the walls and paint the unit. The Landlord referred to his photographic evidence in support of the damage. The Landlord testified that he previously painted the unit in 2014.

In response, the Tenants testified that the rental unit had not been recently painted when they moved in. They testified that the paint was coming off the walls. They testified that the Landlord promised to paint the unit but failed to follow through. The Tenant did acknowledge that he was responsible for the hole in the wall in the bedroom closet.

Cleaning \$300.00

The Landlord testified that the Tenant left the rental unit dirty and damaged at the end of the tenancy. The Landlord provided color photographs taken of the rental unit at the end of the tenancy in support of his testimony that the rental unit was left damaged and dirty. The Landlord testified that it took 15 hours to clean the rental unit.

In response, the Tenants testified that they cleaned the rental unit before moving out. The Tenants testified that they did not clean the bathroom mirror but did clean the rest of the bathroom.

The Tenants acknowledged that the garbage in photograph #13 was theirs and that they left some items in the fridge.

Cost of Pictures and Photocopies \$83.46

The Landlord is looking to recover the cost of preparing the disclosure evidence for the hearing. The Landlord is seeking \$83.46 for photographs and photocopying.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, and proof that the party took all reasonable measures to mitigate their loss.

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

*An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.*

*An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:*

*“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

*A party seeking compensation should present compelling evidence of the value of the damage or loss in question.*

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

*a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.*

#### Loss of Rent \$1,200.00

I find that the Landlord issued a notice to end tenancy with an effective date of June 30, 2016. The Tenants complied with the Notice and were not required to provide the Landlord with a written notice to end tenancy.

I find that the rental unit was not in such a poor condition that the Landlord was prevented from renting it out for the entire month of July 2016. The Landlord has an obligation to mitigate the loss. There was insufficient evidence from the Landlord that he took steps to attempt to re-rent the unit for July 2016.

The Landlords claim for a loss of rent is dismissed.

#### Garbage Removal \$300.00

I find that the Tenants left garbage, food, furniture and children's toys in the rental unit after they moved out. I find that the Tenants are responsible for the Landlord's cost to remove and dispose of the garbage and items.

I accept the Tenants testimony that the television was not their property. I find it is reasonable to reduce the Landlord's claim by \$25.00 to account for the removal and disposal of the television.

I grant the Landlord the amount of \$275.00.

Door Purchase and Installation \$153.00

The Landlord failed to perform a move in and move out inspection of the rental property. There is insufficient evidence from the Landlord to establish the condition of the door at the start and end of the tenancy. The Landlord did not provide any photographic evidence of damage to the door.

The Landlords claim is dismissed due to insufficient evidence that the Tenant was responsible for damage to a door.

Lock Purchase and Installation \$186.57

The Landlord failed to perform a move in and move out inspection of the rental property. There is insufficient evidence from the Landlord to establish the condition of the doors and locks at the start and end of the tenancy. The Landlord did not provide any photographic evidence of damage to the door locks.

The Landlords claim for the cost of locks for the bedrooms and sundeck are dismissed.

I grant the Landlord the amount of \$61.57 for the cost of a new lock for the main entrance. The Tenants were responsible to return the keys to the unit at the end of the tenancy. The Landlord purchased the lock on July 13, 2017, prior to the date the Tenants returned the keys.

Wall repair and repainting \$1,575.00

Landlords are responsible to paint the interior of a rental unit at reasonable intervals.

The Landlord failed to perform a move in and move out inspection of the rental property. The Tenant refuted the Landlord's evidence that the unit had been recently painted and was in good condition. The burden of proof rests with the applicant / Landlord.

I find that there is insufficient evidence from the Landlord to establish the condition of the walls and paint at the start of the tenancy.

The Landlords claim for repair and repainting of the rental unit is dismissed; however, The Tenant admitted to making a hole inside the bedroom closet.

I award the Landlord the amount of \$50.00 for the cost to repair the hole in the closet.

#### Cleaning \$300.00

I prefer the evidence provided by the Landlord that the rental unit was left dirty at the end of the tenancy. I find that the Landlord's color photographs showing the state of cleanliness of the unit outweigh the Tenants testimony that they left the rental unit clean.

While I acknowledge that the Landlord did not perform a move out inspection, I find that the Tenants admitted leaving some garbage behind and the Landlord has provided clear and convincing evidence that the unit was left in a dirty condition.

I grant the Landlord the amount of \$300.00 for the cost of cleaning the rental unit.

#### Pictures and Photocopies \$83.46

The Landlords claim for the cost of photocopying and photographs is dismissed. The Act does not specifically allow compensation for the costs of preparing for a hearing. I find that the Landlords costs are a result of doing business as a Landlord and are not recoverable from the Tenant.

The Landlords claim for \$83.46 is dismissed.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord was partially successful with his application. I order the Tenants to repay the amount of \$100.00 for the cost of the application.

#### Monetary Awards

The Landlord has established a monetary claim in the amount of \$786.57.

I grant the Landlord a monetary order in the amount of \$786.57. The order must be served on the Tenants and may be enforced in the Provincial Court.

Conclusion

The Landlord established the claim for compensation in the amount of \$686.57 due to the Tenants leaving the rental unit dirty and damaged.

The Landlord is awarded the \$100.00 cost of the filing fee.

The Landlord is granted a monetary order in the amount of \$786.57.

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: November 2, 2017

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Residential Tenancy Branch