



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNDC, FF

### Introduction

This hearing was convened by way of a conference call in response to the Landlords' Application for Dispute Resolution (the "Application") filed on May 18, 2017 for a Monetary Order for: damage to the rental unit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), the regulation and tenancy agreement; and to recover the filing fee from the Tenant.

Both parties appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlords' Application and their evidence which was served prior to this hearing by registered mail.

However, the Landlord's evidence was not before me at the time of the hearing. As the parties had already exchanged the evidence, they were allowed to reference it during the hearing. Accordingly, the Landlords were instructed to provide a copy of that evidence to the Residential Tenancy Branch after the hearing had taken place.

The Tenant confirmed that while she had not provided any evidence for this hearing, she had submitted evidence to support her application for a monetary claim which was scheduled to be determined separately to this matter on November 2, 2017.

The hearing process was outlined to the parties and no questions as to how the proceedings would be conducted were raised. The parties were given an opportunity to make submissions, present evidence and to cross examine each other on the evidence.

### Issue to be Decided

Are the Landlords entitled to monetary compensation for damage to the rental unit?

### Background and Evidence

Both parties confirmed that this tenancy with the Tenant and previous landlord started in December 2007 on a month to month basis. The Landlords took over the tenancy in November 2015.

The tenancy ended when the Tenants vacated the rental unit on April 30, 2017 pursuant to a notice to end tenancy for the Landlords' use of the property. The rent payable at the end of the tenancy was \$2,096.00 on the first day of each month.

The parties confirmed that the previous landlord did not complete a move-in Condition Inspection Report ("CIR") and the Landlords did not complete a move-out CIR.

The female Landlord testified that at the end of the tenancy, the Tenant failed to replace three light bulbs which the Landlords replaced for a cost of \$23.42. The Tenant did not dispute this claim stating that she thought this was the Landlords' responsibility, but after the Application was filed she realised that this was her responsibility to replace.

The Landlord's remainder claim involved a cost of \$312.48 to dispose of the Tenant's personal property which was claimed to be left behind by the Tenant at the end of the tenancy. The female Landlord testified that prior to the tenancy ending, she met with the Tenant and they went over the items the Tenant was going to be leaving behind and agreed as to what was required to be cleaned and fixed. However, this conversation or the agreement was not recorded in writing.

The female Landlord testified that shortly after the tenancy ended, she emailed the Tenant on May 4, 2017 explaining that the Tenant had failed to remove a number of items which she had originally promised to remove, namely a wood bench, planter boxes and compost, a large white cabinet, a compost bin, a small white stand, a wood bench, a rug and miscellaneous garden items.

The female Landlord testified that the Tenant then attended the rental unit on May 7, 2017 with her lawyer, who was later confirmed to be the previous landlord, and declined to take away or dispose of the above items stating that they would just say the items were present at the start of the tenancy.

The Tenant testified that she did attend the rental unit on May 7, 2017 to remove the items that belonged to her, but these were only small items that had been missed during the move out. The Tenant stated that the items being claimed by the Landlord as being left by the Tenant were present at the start of the tenancy and did not belong to her.

The male Landlord testified that the purchase contract of the rental home, which they had bought from the previous landlord, did not include any of the items claimed by the Tenant to have been present at the start of the tenancy. The female Landlord explained that they had raised this issue with the previous landlord who informed them that this would be a contractual matter to be dealt with outside the jurisdiction of the Act.

### Analysis

Section 37(2) of the Act requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy.

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 whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlords 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. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim must fail. Accordingly, I have carefully considered the evidence before me, and apply the above test in my findings as follows.

I award the Landlords the replacement cost of the light bulbs claimed in the amount of \$23.42. This amount was undisputed by the Tenant and pursuant to a Tenant's responsibilities outlined in Policy Guideline 1, the Tenant was responsible for replacing light bulbs during the tenancy.

In relation to the Landlord's remaining Application for the items claimed to be abandoned by the Tenant, I must deny this portion of the claim. I find that while both parties presented plausible evidence, the Landlords failed to convince me that their evidence was conclusive and compelling enough for me to award the relief sought.

I find the absence of a move-in CIR done by the previous landlord, coupled with the failure of the Landlords to complete a move-out CIR or document the state of the rental unit when they purchased it in 2015, is not sufficient to refute the Tenant's evidence that the items were present at the start of the tenancy and did not belong to her.

In the absence of such supporting documentary evidence, I find the only conclusive way to have proven this matter, would have been for either party to have provided the previous landlord to give evidence of whether the items were present at the start of the tenancy. This evidence was not before me. Therefore, I am only able to conclude that the Landlords have failed to meet their burden to prove this portion of the claim.

As the Landlord had to file this Application to obtain relief for the light bulbs, which the Tenant had not been agreeable to prior to the Landlords filing the Application, pursuant to Section 72(1) of the Act, I award the Landlords the \$100.00 filing fee. Therefore the total amount awarded to the Landlords is \$123.42. The Landlords are granted a Monetary Order for this amount which may then be enforced through the Small Claims Division of the Provincial Court as an order of that court.

### Conclusion

The Landlords have been successful in their monetary claim for \$123.42. The balance of the monetary claim is dismissed without leave to re-apply. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 02, 2017

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Residential Tenancy Branch