



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, OPC, MNR, MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent and for cause, pursuant to section 55;
- a monetary order for unpaid rent and utilities, for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 173 minutes in order to allow both parties to fully present their submissions. I note that the landlord spoke for most of the hearing time.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenants' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's application and the landlord was duly served with the tenants' written evidence package.

The landlord confirmed that although she received the tenants' written evidence package late on October 26, 2017, by way of email, she suffered no prejudice and had no objection to me considering the tenants' written evidence package at the hearing and in my decision.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase her monetary claim from \$9,232.00 to \$10,859.82. The landlord did not file an amendment to increase her monetary claim, as required, she only submitted a monetary order worksheet with the higher amount. However, the tenants confirmed that they

received the increased monetary order worksheet, had notice of the increased claim, reviewed it and were prepared to deal with it at this hearing. Therefore, I amended the landlord's claim and considered the higher amount at the hearing.

At the outset of the hearing, the landlord confirmed that she did not require an order of possession because the tenants had already vacated the rental unit. Accordingly, these portions of the landlord's application are dismissed without leave to reapply.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and utilities, for damage to the rental unit and for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit?

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

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2015 for a fixed term of one year after which it became a month-to-month tenancy. Monthly rent of \$1,855.00 was payable on the first day of each month. A security deposit of \$950.00 was paid by the tenants and the landlord continues to retain this deposit in full. Both parties signed a written tenancy agreement and a copy was provided for this hearing.

The tenants claimed that they vacated the rental unit on August 6, 2017, while the landlord claimed that her property manager discovered the place was empty around August 15, 2017.

Both parties agreed that no move-in or move-out condition inspection reports were completed for this tenancy. The landlord said that she did not have written permission to keep any amount from the tenants' security deposit. The tenants confirmed that they did not provide a written forwarding address to the landlord. The landlord filed this application to retain the tenants' security deposit on August 9, 2017.

The landlord seeks a monetary order for \$10,859.82 including the \$100.00 application filing fee. I note that the landlord's claims from #1 to #19 in her monetary order worksheet add up to \$10,823.82 not \$10,859.82.

The landlord seeks a loss of rent of \$1,855.00 for each month in August, September and October 2017. She stated that she is entitled to August 2017 rent because the tenants left on August 15 and she was unable to re-rent the unit for the entire month, despite reasonable efforts to advertise and show the place. She said that the Residential Tenancy Branch ("RTB") told her that she is entitled to two months of notice for September and October 2017 from the tenants before they vacate the rental unit, despite the fact that she re-rented the unit during this entire period, received a higher rent, and issued notices to end tenancy to the tenants.

The tenants claimed that the landlord cannot receive double recovery for September and October 2017, when she received higher rents from other tenants for this period. They also stated that the landlord issued nine eviction notices to them in a 22-month period so they moved out because of the eviction notices. The landlord denied this claim. They claimed that the landlord changed her mind after issuing a June 2017 notice to end tenancy and told them to stay until August 1, 2017. They said that the rental unit was not habitable or sanitary. They also maintained that they informed the landlord's property manager in the last week of July that they would be vacating in August and that they informed her again on August 6 2017, that they had left. The landlord denied this claim, indicating her property manager went to the rental unit on August 6 and the tenants' belongings were still there until August 15, 2017.

The landlord seeks \$295.68 to buy two window glass panes, \$546.56 to install these two glass panes, and \$448.00 to pay back a company that the tenants promised to pay to restore a window glass pane. Both parties agreed that the tenants had a party on December 31, 2016, where one of their guests broke one of the window glass panes beside the front entrance door and the police were involved. The landlord claimed that she issued a notice to end tenancy for the tenants to complete this repair and they failed to do so. She said that she has not fixed the damage because she does not have the money and it is not urgent. She said that two window glass panes need to be replaced because even though only one was affected, if she replaces one, the other one will look really old compared to the new one. She provided emails with quotes and photographs of the potential glass panes and added up the numbers with tax, herself. The tenants claimed that one of their guests caused the damage so they had the one broken window glass pane restored for the landlord to pick up and pay \$200.00 for it. They said that

the landlord failed to pick it up and is now charging a higher amount for two window glass panes. They said that they did not pay for it because the landlord agreed that if they replaced and painted the two front entrance doors, for which they did not cause any damage, the landlord would pay for the window damage. The landlord denied this agreement but admitted that the tenants replaced the two front doors.

The landlord seeks \$285.75 to replace an 11-year-old stove with a used stove at the rental unit. She said the tenants took the oven door off when they vacated so it was unusable. She provided photographs and an invoice for this claim. The tenants claimed that the stove was working fine when they vacated, they did not steal the oven door, and the glass burners were somewhat discoloured due to age, but not damaged.

The landlord seeks \$675.50 to buy laminate flooring and \$200.00 to install it at the rental unit. She said that the tenants' cat damaged the carpeted room in the basement so she replaced it with laminate flooring. She provided photographs and an invoice for this claim. The tenants claimed that the carpet was already damaged prior to them moving in, they provided emails from the previous tenant indicating that she kept a bed over this area in order to cover the damage, and they did the same during their tenancy. They said that the landlord is claiming for increased costs for laminate flooring rather than replacing carpet and indicated the carpet is eleven years old in any event.

The landlord seeks \$120.00 for cleaning the rental unit. The tenants agreed to pay this amount during the hearing.

The landlord seeks \$704.35 for mudding and painting half of the house due to damage on the walls. She said that she paid \$1,408.71 for the entire house but is only charging the tenants for half of the house. She provided photographs and an invoice for \$1,408.71. She said that the tenants used their gas-powered airplane, which caused damage to the walls. She claimed that the tenants were supposed to paint the unit when they moved in since she allowed them to move in early without doing a paint job herself. The tenants claimed that they did not paint the unit when they moved in because they did not require it, and the walls were the same when they left the rental unit, with pre-existing damage.

The landlord seeks \$172.80 for carpet cleaning. She said that the tenants caused stains on the carpet and did not clean it. She said that the carpet is approximately eleven years old. The landlord provided an email from the person she said cleaned the carpet. The tenants claimed that they shampooed the carpet at the end of July 2017

before they left the rental unit, paid \$98.13 cash for this cost and provided a photograph of the invoice.

The landlord seeks \$210.00 to dispose of items and garbage that the tenants left behind at the rental unit. She provided photographs and an invoice for \$420.00 and said that the contractor verbally told her that the tenants should be responsible for half of the invoice because the other half was the landlord's items. She claimed that the tenants left behind two couches, the stove where they took the oven door, and the defaced front door that they replaced. The tenants claimed that they left the front door for the landlord because it was not their door and they did not want to throw it out without her permission, in case she wanted it, even though they replaced it with new doors. They stated that the couches are not theirs and the stove was the landlord's, which was in proper working order since they did not take the oven door.

The landlord seeks \$50.00 to serve the hearing package to the tenants using an individual contractor. She provided an invoice for this cost. I notified the landlord that she could not recover this cost, as noted below.

The landlord seeks \$228.34 to replace the keys and locks at the rental unit because she said that the tenants failed to do so. She provided an invoice for this claim. She said that the tenants signed a document indicating that they received all of the keys for the rental unit when they moved in. The tenants dispute this cost, claiming that they only received two garage door openers and two mail keys, which they returned to the landlord. They said that they did not get two keys for the front door even though they signed for it, because the property manager said she would give it to them later and failed to do so. They said that they used an electronic code for the front door, provided by the landlord's property manager, and that the landlord never changed the locks or code to the front door, for which everyone in the neighbourhood knew the electronic code.

The landlord seeks \$750.00 for the extra work that her property manager had to complete to deal with the tenants' "eviction," planning to meet with the tenants several times to get the rental unit keys back when they did not show up, and dealing with the glass window damage. She provided an invoice for this cost. She said that the property manager is her friend and she mailed out a cheque to pay her but does not know whether it was cashed. She said that banks do not provide cancelled cheque images or confirmation of cashing cheques because it is a personal bank account. The tenants dispute this claim, stating that they were told by the landlord and her property

manager that the cost was only \$600.00 per year for the landlord's property management services and the landlord was charging more than one year's services for no reason. They said that they dropped off the rental unit keys to the property manager once, not multiple missed meeting attempts.

The landlord seeks \$330.67 to replace a smoke alarm and baseboard heater portion at the rental unit, which she said the tenants took when they vacated. She provided photographs of the missing areas and an invoice for the cost. The tenants disputed this claim, stating that they did not steal the smoke alarm or baseboard heater portion when they vacated. They said that the smoke alarm and baseboard heater were in proper working order when they arrived at and vacated the rental unit.

The landlord seeks \$141.17 for a water utility bill covering the period from June 17 to August 25, 2017 at the rental unit. She provided the water bill in her name with the above amount and dates. The tenants claimed that they cancelled their water account on August 6, 2017 so when they called the water company to pay what was owed, they were told that the landlord changed the bill to increase the cost. During the hearing, the tenants agreed to pay for water, as per their tenancy agreement, from June 17 to August 6, 2017, directly to the water company, not the landlord.

### Analysis

### Credibility

Overall, I found the landlord to be largely unprepared for the hearing. Most of the hearing time was spent waiting for the landlord to go through her documentary evidence and find proof of her claims because she did not organize her evidence properly and failed to number the pages or use a consistent system to identify the documents. The landlord submitted approximately 93 pages of evidence and 35 coloured photographs and was frequently lost throughout the hearing because she could not find or explain her own documents. It was incredibly confusing to follow the landlord's testimony and documents for this reason and it greatly lengthened the hearing time which took almost three hours.

I notified the landlord that she had more than enough time, from the date of filing her application on August 9, 2017, until the hearing date on November 1, 2017, a period of almost three months, to organize and submit her documentary evidence. I informed her that I would not allow any further documentary evidence to be submitted after the hearing since the tenants would not have a chance to respond.

I found the tenants to be more credible and forthright witnesses than the landlord. They provided clear, consistent and convincing testimony throughout the hearing. They admitted when they were responsible for errors or did not have proof of various claims. In contrast, I found that the landlord's testimony frequently changed throughout the hearing, depending on the questions I asked or the comments that the tenants made. For example, when the tenants questioned the landlord about the contractor she used for the majority of the damage repairs completed in the rental unit, the landlord kept claiming that he was in the "military" so he was an expert in being a handyman and fixing things around the house. When I asked why he did not issue invoices on proper letterhead or with a signature, the landlord said it was because he was in the military so that is how he dealt with business. The landlord repeatedly argued and debated issues with me when I questioned her about proof of her claims. The landlord lacked a lot of documentary evidence to support her claims.

#### Burden of Proof

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

#### Landlord's Claims

I award the landlord \$120.00 for cleaning because the tenants agreed to pay this amount to the landlord during the hearing.

I award the landlord \$359.03 of the \$5,565.00 claimed for three months of a loss of rent from August 1 to October 31, 2017. I award the landlord six days of pro-rated rent from August 1 to 6, 2017 in the amount of \$359.03 (\$1,855.00 / 31 days in August x 6 days). I accept the tenants' testimony that they vacated the rental unit on August 6, 2017, not August 15 as claimed by the landlord. As noted above, I found the tenants to be more

credible than the landlord. The tenants agreed that they lived in the rental unit from August 1 to 6, 2017 and their tenancy agreement and section 26 of the Act require them to pay rent of \$1,855.00 per month, which is due on the first day of each month.

I dismiss the remainder of the landlord's claim in the amount of \$5,205.97 for a loss of rent from August 7 to October 31, 2017, without leave to reapply. I find that the landlord is not entitled to any rent from August 7 to August 31, 2017. I accept the tenants' testimony that the landlord served the tenants with multiple notices to end tenancy and then changed her mind repeatedly, such that the tenants left on August 6, 2017, following the last eviction notice, which was the landlord's option to issue and serve. In fact, this current application was originally filed by the landlord to obtain an order of possession based on a "10 Day Notice to End Tenancy for Unpaid or Utilities" and an order of possession based on a "1 Month Notice to End Tenancy for Cause." When a landlord serves notices to end tenancy and tenants move out pursuant to the notices, the landlord cannot expect additional notice to be given by the tenants for move-out. The landlord also failed to provide copies of any rental advertisements she posted in order to prove how, when and in what format she attempted to re-rent the unit, thereby failing to prove mitigation of her losses.

I find that the landlord is not entitled to any rent from September 1 to October 31, 2017. The landlord admitted during the hearing that she re-rented the unit to new occupants as of September 1, 2017 and charged them \$2,300.00 per month, a higher amount than the \$1,855.00 amount that the tenants were paying during their tenancy. The landlord agreed that she received full rent of \$2,300.00 from these new occupants from September 1 to October 31, 2017. Therefore, she is not entitled to double recovery from both the tenants and the new occupants.

I award the landlord \$100.00 of the \$141.17 claimed for the water bill to cover the period from June 17, 2017 and August 6, 2017, when the tenants were still residing in the rental unit. I have estimated the above loss because the landlord was unable to provide a breakdown per day or month. I find that the above amount is reasonable to cover the above period. The tenants agreed to pay the water company directly for water used between June 17, 2017 and August 6, 2017, as per their tenancy agreement. The landlord produced the water bill account in her own name and it states that overdue accounts will be added to the landlord's real property taxes. Therefore, I order the tenants to pay this amount to the landlord directly, not the water company. I find that the landlord is not entitled to water amounts from August 7 to 25, 2017, because the tenants had already vacated the rental unit by August 6, 2017 and I find that the landlord is not entitled to losses beyond August 6, as noted above.



I dismiss the landlord's claim for \$50.00 without leave to reapply, for serving the hearing package to the tenants. I informed the landlord during the hearing that the only hearing-related cost that can be recovered is for filing fees under section 72 of the *Act*.

I dismiss the landlord's claim for \$750.00 without leave to reapply, for her property manager to conduct "additional" business on the landlord's behalf. The landlord failed part 3 of the above test because she did not provide a receipt for this expense, despite the fact that the property manager is her friend and is easily accessible to her. The landlord claimed that she paid by way of a cheque, but failed to provide any bank statements or a copy of the cancelled cheque to prove payment, which are available from banks even for personal accounts. The landlord did not inquire with her bank or provide documentary evidence indicating the bank could not confirm the cashed cheque.

I dismiss the landlord's claims without leave to reapply for \$330.67 for the smoke alarm and heater, \$228.34 for the locks and keys, \$210.00 for the disposal of furniture and garbage, \$172.80 for carpet cleaning, \$704.35 for mudding and painting, \$285.75 for the stove, \$675.50 for the laminate flooring, and \$200.00 to install the laminate flooring. The landlord failed part 3 of the above test by not providing receipts or confirmation that she paid these amounts by way of e-transfer.

I dismiss the landlord's claims without leave to reapply for \$546.56 to install two glass window panes, \$295.68 to buy the two glass window panes, and \$448.00 to pay for restoration of one glass window pane ordered by the tenants. The landlord failed part 3 of the above test, as she has not paid for these amounts and therefore has no receipts. She said that she filed the \$448.00 claim on behalf of one company that the tenants promised to pay but did not. I am unable to award money to the landlord for this, when she has not paid for it, it has not been charged to her since the invoice she provided does not even have her name on it, and it is not her debt to collect.

As the landlord was mainly unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenant's security deposit of \$950.00. No interest is payable on the deposit during the period of this tenancy. I order the landlord to retain \$579.03 from the tenants' security deposit in full satisfaction of the monetary award and to return the remainder of the deposit in the amount of \$370.97 to the tenants within 15 days of receiving this decision.

Conclusion

I order the landlord to retain \$579.03 from the tenants' security deposit in full satisfaction of this claim. I order the landlord to return the remaining \$370.97 from the tenants' security deposit to the tenants within 15 days of receiving this decision.

I issue a monetary order in the tenants' favour in the amount of \$370.97 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlord's application is dismissed without leave to reapply.

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 08, 2017

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Residential Tenancy Branch