



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MND MNDC MNSD FF

### **Introduction:**

Only the landlord's agent (hereinafter called 'the landlord') attended and gave sworn testimony. The landlord said they served the Application for Dispute Resolution on the tenant by registered mail (tracking # provided) and it was not returned. I find the documents were legally served pursuant to section 89 of the Act for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for unpaid rent and damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

### **Issue(s) to be Decided:**

Has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear the cost of repair? Is the landlord entitled to recover the filing fee?

### **Background and Evidence:**

The tenant did not attend the hearing although served with the Application/Notice of Hearing. The landlord attended and was given opportunity to be heard, to present evidence and to make submissions. The landlord stated that the tenancy commenced in September 1, 2000, that monthly rent was \$625 and a security deposit of \$225 was paid in September 2000 and a further \$87.50 top up was paid in June 2008.

The premises were described as a single family home built about 1949. The tenant rented the whole house and agreed to be responsible for yard upkeep. Over the years, the landlord said the tenant first did the yard work herself and then paid a neighbour to do it. The neighbour stopped as he was not reimbursed for some of his invoices. As a result, the landlord said the yard was very overgrown with weeds, blackberry and other bushes. In addition, the tenant had smoked in the house, although it was a non smoking lease, and kept a cat so the carpets were very dirty and had cigarette burns.

They had to throw out the carpets and replace the flooring. In addition, they had to throw out a stove and refrigerator that were maybe 15 years old because they had never been cleaned so had stains and odour. The landlord claims as follows:

1. Used stove and refrigerator (250+350) –total \$600
2. Remove carpeting, dump fees, trucking and dumping -\$125.25
3. Yard work: 186+72+42+200 = total \$500
4. Management fees, tools, prepare for hearing =\$275.63

The tenant provided no documents and did not attend to dispute the claim. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

**Analysis:**

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.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that this tenant caused some damage. As discussed with the landlord in the hearing, Residential Policy Guideline #40 assigns a useful life for elements in rented premises. This is designed to account for reasonable wear and tear. I find appliances are assigned a useful life of 15 years. The evidence is that the stove and refrigerator were at the end of their useful life. Therefore, I find the landlord not entitled to reimbursement for replacing the stove and refrigerator.

In respect to costs of removing carpeting, trucking and dumping fees, I find the weight of the evidence is that the carpet had to be removed as it was badly burned and stained. I find the tenant violated the *Act* by not caring for the carpet. The landlord is not claiming for cost of replacement but I find him entitled to recover the trucking and dumping fees for the cleanup of carpet and other items on the property for a total of \$125.25.

I find the weight of the evidence is that the tenant was responsible for the yard work based on the landlord's testimony and Policy Guideline 1 which states a tenant of a single family dwelling is generally responsible for yard maintenance unless there is an agreement to the contrary. Also, I find she recognized this responsibility by paying a neighbour to do the work at times. Unfortunately, I find the tenant violated this provision by not caring for the yard as she got older. I find the yard got very overgrown and the landlord was put to the expense of cleaning it up. I find the landlord entitled to recover his costs of \$500 for the cleanup. I find the landlord's claims were well supported by invoices and photographs. He said the tenant did not attend to do a move out inspection report so he took the photographs.

In respect to the landlord's last invoice, I find he is entitled to recover fees paid to the agent for supervision and tools necessary for the cleanup in the amount of \$75. However, I find the balance of the invoice is for processing the application and serving it. Section 72 of the Act restricts the recovery of such costs to the filing fee of \$100. I find the landlord entitled to recover this fee but not the additional costs charged for processing the paperwork.

**Conclusion:**

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit with interest to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

**Calculation of Monetary Award:**

Cleanup and dumping of items in home	125.25
Yard cleanup	500.00
Agent supervision fee for cleanup	75.00
Filing fee	100.00
Less security deposit- \$225 with interest from Sept 2000 plus \$87.50 from June 2008	-329.84
Total Monetary Order to Landlord	470.41

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 28, 2017

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Residential Tenancy Branch