



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      MND, MNR, FF

### Introduction

This is a Review Hearing Decision from a hearing conducted on February 1, 2018. The original dispute hearing was heard on December 5, 2017. The applicant Landlord failed to attend the hearing and the Landlord's application was dismissed without leave to reapply.

### New Hearing

On December 8, 2017, the Landlord applied for a review consideration and was granted a review hearing on the basis of a medical emergency presenting an inability to attend the original hearing.

The Landlord submitted an Application for Dispute Resolution seeking a monetary order for loss of rent; for damage and cleaning of the rental unit; and to recover the filing fee for the Application.

The matter was set for a conference call hearing. The Landlords and the Tenant attended the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony. The Tenant confirmed receipt of the Landlord's documentary evidence. The Tenant did not submit any documentary evidence.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

- Are the Landlords entitled to a monetary order to recover unpaid rent?
- Are the Landlords entitled to a monetary order for damage and cleaning?
- Are the Landlords entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on January 1, 2015, as a one year fixed term tenancy. Rent in the amount of \$2,350.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,175.00. The Landlord provided a copy of the tenancy agreement.

The Tenant testified that he vacated the unit at the end of February 2016. The Landlord testified that the Tenant and all other occupants vacated the rental unit by the end of February 2016.

Landlord's Claims

The Landlord testified that the Tenant is responsible for the costs to repair damage to the rental unit at the end of the tenancy. The Landlord testified that he also suffered a loss of rent.

The Landlord is requesting compensation for the following items:

Rent for February 2016	\$2,350.00
Electrical repairs	\$390.08
Cleaning costs	\$1,538.27
Gas	\$106.68
Key replacement	\$15.64
Curtain Rod replacement	\$100.00
Refrigerator Door	\$712.99
Stove top	\$292.12
Ants, Painting and Dump costs	\$648.66
Rent reimbursement	\$1,080.00

Rent \$2,350.00

The Landlord testified that he never received a rent payment for February 2016. The Landlord is seeking \$2,350.00 for a loss of rent.

In response, the Tenant testified that he informed the Landlord that he was moving out of the rental unit and the other Tenants were staying. He submitted that the other Tenants were to take care of paying the rent going forward. He submitted that payment of February rent probably did not happen. He submitted that he never provided the Landlord with a written notice that he was ending the tenancy.

Electrical repairs     \$390.08

The Landlord submitted that there as an electrical issue in the garage. He submitted that he could not get the power to work, so he ran a new power line. He submitted that the power worked at the start of the tenancy. The Landlord provided an invoice dated March 14, 2016, for re feeding a circuit in the garage.

In response, the Tenant submitted that he has no idea why the power did not work. The Tenant submitted that the Landlord has no evidence that the Tenants' are responsible for damaging the electrical system.

Cleaning costs     \$1,538.27

The Landlord testified that he had to hire a contractor to fix up the rental unit after the Tenants moved out. He submitted that a garage door was damaged by a Tenant's brother was replaced. He submitted that there were nail holes in the walls and they needed to be patched and painted.

The Landlord testified that the rental unit required extensive cleaning. He submitted that the oven, fridge, microwave, and kitchen, required cleaning. He submitted that it took 13 hours at \$25.00 per hour. He submitted that the bathroom, garage and yard cleaning took 9 hours at \$20.00 per hour. He submitted that there was debris in the yard and pool and dog feces in the yard. The Landlord submitted that pool maintenance was the responsibility of the Tenants.

The Landlord provided 14 black and white photographs of the interior and exterior of the rental property in support of his submissions.

The Landlord provided a copy of an invoice in the amount of \$1,538.27 from C.K. dated April 6, 2016, for cleaning and repairs to the rental property.

In response, the Tenant submitted that he has no recollection of damage being done to the front door. He submitted that the electric motor for the garage door did not work at the start of the tenancy.

The Tenant submitted that they had to clean the rental unit and pool at the start of the tenancy. He acknowledged that a co-tenant had his brother staying at the rental unit. He submitted that he cannot say if the rental unit was left in a clean condition because he had moved out.

Gas \$106.68

The Landlord is seeking \$106.86 for the Tenants unpaid utility gas bill. The Landlord provided a copy of the bill in the Landlord's name.

In response, the Tenant acknowledged responsibility to pay the amount of the bill.

Key replacement \$15.64

The Landlord testified that the Tenants failed to return the keys to the rental unit and the Landlord needed to get three keys cut.

The Tenant did not make any submissions in response to the Landlords claim.

Curtain Rod and Curtain Replacement \$100.00

The Landlord testified that the curtain rod and curtain for the master bedroom were missing and needed to be replaced. The Landlord did not provide a receipt and stated that he is guessing on the replacement cost.

In response, the Tenant submitted that he is unaware of the curtains being there at the start of the tenancy or that they were missing at the end of the tenancy. The Tenant raised the issue that there is no condition inspection report submitted by the Landlord to show the condition and state of repair of the unit at the start of the tenancy and at the end of the tenancy.

Refrigerator Door \$712.99

The Landlord testified that the Tenants are responsible for a dent on the stainless steel refrigerator. He testified that the refrigerator was brand new. He submitted that he received a quote for the replacement cost of a new door. The Landlord has not replaced the door. The Landlord submitted that he provided a photograph of the damaged refrigerator.

In response, the Tenant submitted that he is not aware of any damage done to the refrigerator.

Stove Top    \$292.12

The Landlord testified that the Tenants are responsible for damaging the stove top. He submitted that the replacement cost of the stove top is \$292.12. He submitted that he has not replaced the stove top.

In response, the Tenant submitted that he is not aware of any damage done to the stove top.

Ants, Painting and Dump Costs    \$648.66

The Landlord submitted that the Tenants are responsible for an ant infestation. The Landlord submitted that the exterminator cost \$299.25. The Landlord is also seeking \$200.00 for the cost of the paint for repainting the rental unit.

The Landlord is seeking \$110.0 for the cost he incurred taking waste to the dump and is seeking an additional \$50.00 for fuel.

In response, the Tenant submitted that there was no ant infestation when the Tenants lived there. The Tenant submitted that he does not agree to pay the dump costs or fuel costs.

The Tenant submitted that the Landlord is inflating his monetary claims. He submitted that the contractor that the Landlord hired to perform the repairs is the Landlord's new Tenant.

In response, the Landlord acknowledged that he rented the unit out to the contractor, Mr. C.K. who performed the repairs to the rental unit.

Rent Reimbursement    \$1,080.00

The Landlord testified that he re rented the unit out starting March 1, 2016. He submitted that he reduced the rent for the new Tenant in the amount of \$500.00 and is claiming an additional \$480.00 for his efforts to make it all happen.

The Tenant submitted that the Landlord cannot just reduce a new Tenants rent and expect to recover it from the previous Tenant.

### Condition Inspection Report

With respect to the Tenant's submission that the Landlord has not provided a condition inspection report; sections 23 and 35 of the Act require a Landlord to arrange for an inspection of the rental unit at the start and end of the tenancy. A properly completed condition inspection report is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary. There was no testimony from the Landlord regarding a move in or move out inspection of the rental unit and there is no documentary evidence of a condition inspection report in the Landlord's evidence.

### Analysis

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.*

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.*

Based on all of the above, the evidence and testimony of the Landlord, and on a balance of probabilities, I find as follows:

Rent \$2,350.00

I find that the Tenant is responsible to pay the rent for February 2016. The Tenant is named in the tenancy agreement and is responsible for tenancy related issues including payment of rent until the end of the tenancy. The Tenant acknowledged that he did not pay the rent for February 2016, and he submitted that the rent payment probably did not happen.

I grant the Landlord \$2,350.00 for the loss of rent for February 2016.

Electrical Repairs    \$390.08

The Landlords claim for \$390.08 is dismissed. There is insufficient evidence from the Landlord to establish that the Tenants' are responsible for damage to the electrical system.

Cleaning costs        \$1,538.27

There is no condition inspection report showing the condition of the unit at the start and end of the tenancy; however, the Landlord provided testimony and photographs taken of the rental unit and property at the end of the tenancy showing it to be unclean and damaged. The Tenant moved out early and was not present at the rental unit at the end of the tenancy. I find that the Tenant was not aware of the condition of the rental unit at the end of the tenancy. I find that the Landlord has provided the stronger evidence regarding the condition of the rental unit at the end of the tenancy.

I grant the Landlord \$1,538.27 for the cost of cleaning and repairs to the rental unit.

Gas    \$106.68

The Tenant acknowledged responsibility to pay the gas bill. I grant the Landlord the amount of \$106.68.

Key Replacement    \$15.64

I grant the Landlord the amount of \$15.64 for key replacement. The Tenant did not respond to the Landlord's claim.

Curtain Rod and Curtain replacement    \$100.00

There is insufficient evidence from the Landlord to that the Tenant is responsible for a missing curtain and curtain rod. The Tenant stated he was not aware of the curtains or that they were missing. The Landlord did not provide evidence of a curtain being present at the start of the tenancy and missing at the end of the tenancy, and did not provide receipts for the replacement of a curtain rod or curtain. The Landlord's claim is dismissed.

Refrigerator Door    \$712.99

The Landlord's claim for the replacement cost of the refrigerator door is dismissed. The Tenant refutes that there was damage. There is no condition inspection report. There is insufficient evidence from the Landlord to show the condition of the refrigerator at the start of the tenancy. The Landlord stated that he provided a photograph of the damaged refrigerator at the end of the tenancy; however, there is no photograph located in the Landlord's documentary evidence. There is no receipt from the Landlord and the Landlord has not made the replacement.

Stove top    \$292.12

The Landlord's claim for the replacement cost of the refrigerator door is dismissed. The Tenant refutes that there was damage. There is no condition inspection report. There is insufficient evidence from the Landlord to show the condition of the stove top at the start of the tenancy. The Landlord did not provide a photograph of a damaged stove top at the end of the tenancy. There is no receipt from the Landlord and the Landlord has not made the replacement.

Ants, Painting and Dump costs    \$648.66

The Landlord's claim to recover \$299.25 for ant extermination is dismissed. There is insufficient evidence from the Landlord to establish that the Tenants' were responsible for the ant infestation.

I grant the Landlord's claim of \$200.00 for the cost of painting materials. The Landlord provided photographs of the interior of the unit showing numerous patches to the walls of the unit. It is reasonable that the Landlord would incur a cost for the paint to cover the patches.



The Landlords request for \$110.00 for dump fees and \$50.00 fuel are dismissed. The Landlord already claimed for dump fees within the invoice dated April 6, 2016, and the Landlord has not provided any other invoices or receipts in support of these claims.

Rent Reimbursement \$1,080.00

The Landlord's claim for \$1,080.00 is dismissed. The Landlord rented the unit to his contractor as of March 1, 2017, and reduced the rent by \$500.00 for the first month, and he is also seeking compensation for his efforts. I find the Landlords claim appears to be a penalty. I do not find the Tenant to be responsible to compensate the Landlord for these costs.

Security Deposit

While the Landlord's application does not specifically include a claim to retain the security deposit, his monetary order worksheet indicates that he intended to request to keep the deposit in partial satisfaction of his claims. Since there is no record before me that the Tenants' applying for the return of the deposit, within a year of the tenancy ending, I grant the Landlord's request to keep the security deposit in partial satisfaction of his claims.

I authorize the Landlord to keep the security deposit of \$1,175.00 in partial satisfaction of his claims.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was mostly successful with his application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Landlord has established a monetary claim in the amount of \$4,310.59 for unpaid rent, cleaning, and damage.

After setting off the security deposit of \$1,175.00 towards the award of \$4,310.59, I grant the Landlord a monetary order for the balance of \$3,135.59. The monetary order must be served on the Tenant and may be enforced in the Provincial Court.

Conclusion

I find that the Tenant owes the Landlord the amount of \$4,310.59 for unpaid rent, cleaning costs and damage to the rental unit.

I authorize the Landlord to keep the security deposit in the amount of \$1,175.00 and I grant the Landlord a monetary order for the balance owed of \$3,135.59.

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: February 15, 2018

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Residential Tenancy Branch