



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

On August 16, 2017, the Landlord submitted an Application for Dispute Resolution seeking compensation for unpaid rent; damage to the unit; to keep the security deposit and pet damage deposit; and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant attended the hearing. At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties testified that they have exchanged the documentary evidence before me. 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 to the unit?
- Is the Landlord entitled to retain the security deposit or pet damage deposit?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy commenced in October 2014, as a fixed term tenancy. The parties renewed the fixed term tenancy which continued thereafter as a month to month tenancy. The Tenant was to pay the Landlord monthly rent in the amount of \$1,125.00 by the 28<sup>th</sup> day of each month. The Tenant paid the Landlord a

security deposit of \$550.00 and a pet damage deposit of \$275.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that after the Tenant moved out on July 31, 2017, the rental property required cleaning, and repairs. The Landlord is also seeking compensation for unpaid utility bills.

The Landlord is requesting compensation for the following items:

Lawn care	\$225.00
Hydro bills	\$327.00 + 163.00
Broken Window	\$72.69
Carpet Cleaning	\$200.00
Table and 2 benches	\$360.00

#### Lawn Care

The Landlord testified that he provided lawn care service for the rental property every two weeks for the amount of \$45.00. The Landlord testified that the Tenants failed to pay for the lawn care for the months of May 2017, and June 2017. The Landlord testified that he cut the lawn twice in May and three times in June. The Landlord testified that the agreement for lawn care is not contained in the tenancy agreement. The Landlord is seeking compensation in the amount of \$225.00.

In reply, the Tenant submitted that the Landlord told her she could not use anyone else for lawn care other than the Landlord. She testified that she felt forced into the agreement and did not want to raise it as an issue. She testified that she paid the Landlord for lawn care; however, in the beginning of the summer in 2017, she asked the Landlord to stop cutting the lawn. She testified that it was drought like conditions and the lawn did not require cutting.

#### Hydro bills

The Landlord testified that the tenancy agreement requires the Tenants to be responsible for paying the hydro bills. The hydro is in the Landlord's name and the Landlord provides the bill to the Tenants for payment. The Landlord testified that he gave the hydro bills to the Tenant and the Tenant failed to pay them. The Landlord provided a copy of two hydro bills in the amount of \$327.35 and \$163.35.

In reply, the Tenant testified that she withheld payment of the two hydro bills because she has a concern regarding payment for water usage.

#### Broken Window

The Landlord testified that the Tenant is responsible for the cost to repair a broken bedroom window in the rental unit. The Landlord is seeking \$72.69 and provided a receipt for the repair.

In reply, the Tenant accepted responsibility to pay for the repair cost of the window.

#### Carpet Cleaning

The Landlord testified that he permitted the Tenants to move into the rental unit three days early based on an agreement that the Tenants would take responsibility to clean the rental unit. The Landlord testified that the Tenants agreed to clean the carpets at the start of the tenancy. The Landlord testified that the Tenants failed to clean the carpets at the end of the tenancy. The Landlord testified that he had the carpets cleaned and he is seeking \$200.00.

In reply, the Tenant testified that she did not have the carpets cleaned at the end of the tenancy because she paid for them to be cleaned at the start of the tenancy.

#### Table and Bench Seats

The Landlord testified that he provided the Tenants with the use of a pine table and bench seats at the start of the tenancy. The Landlord testified that the Tenant stored the table and seats outdoors and they became damaged. The Landlord testified that the table and benches were approximately 10 years old but in good shape. The Landlord testified that the tenant offered to redo the table. The Landlord submitted that the replacement cost for the table and benches is \$360.00.

In reply, the Tenant testified that the table is a picnic style table made from 2x 4 wood. She testified that the table was beaten up and old. She testified that it was left on an uncovered deck and she asked the Landlord to remove it. The Tenant submitted that that she moved it to another location outside. She testified that the table was not destroyed, but it needed paint, and she offered to redo it at the Landlord's cost.

#### Security Deposit and Pet Damage Deposit

At the start of the tenancy the Tenant paid the Landlord a security deposit of \$550.00 and a pet damage deposit of \$275.00. The parties testified that the tenancy ended on July 31, 2017. The Landlord testified that he received the Tenant's forwarding address in writing on July 7, 2017. The Landlord applied for dispute resolution requesting to keep the deposits on August 16, 2017.

### Analysis

Section 38 (1) of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit and/or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off provides:

*If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.*

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

*The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.*

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.*

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

### Lawn Care

The definition of a tenancy agreement means:

*an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;*

The provision of lawn care by the Landlord was not a term or requirement under the tenancy agreement as I find that it did not form part of an oral or written tenancy agreement. The Tenant had the right to stop the lawn service at any time and complete the yard maintenance herself.

As the Landlord's claim is not related to a breach of the tenancy agreement, or Act, I decline jurisdiction to hear this claim. The Landlord's claim for \$225.00 is dismissed without leave to reapply.

#### Hydro bills

I find that the tenancy agreement required the Tenant to pay the cost of hydro. The Tenant did not have a legal right under the Act to withhold payment of the hydro bills. I grant the Landlord a monetary award of \$490.70. for the unpaid hydro costs.

#### Broken Window

The Tenant accepted responsibility for the repair cost of the bedroom window. I grant the Landlord a monetary award of \$72.69.

#### Carpet Cleaning

If the Tenant wished to claim the cost of cleaning the carpets at the start of the tenancy, the Tenant should have raised the issue with the Landlord at that time and requested repayment. I find that the Tenant was not diligent in making a claim for the cost of carpet cleaning.

The tenancy was for a period of more than one year and the Tenant is responsible for cleaning the carpet at the end of the tenancy, regardless of who paid for the carpet cleaning at the start of this tenancy.

I find that the Landlord's claim for \$200.00 for carpet cleaning is a reasonable cost. I award the Landlord \$200.00 for carpet cleaning.

Table and Benches

Residential Tenancy Branch Policy Guideline #40 Useful Life of Building Elements provides that wood assets or furniture have a useful life expectancy of 10 years.

The Landlord's claim for \$360.00 for the replacement cost of the table and benches is dismissed. The parties agreed that the table and benches were 10 years old but they disagreed on the condition. The Landlord testified that table was in good shape and the Tenant testified that it was beaten up and old. The Landlord did not provide any photographs to establish the condition of the table and benches.

I find that the table and benches were 10 years old and were at their useful life expectancy. The Landlord's claim for compensation is dismissed without leave to reapply.

Security Deposit and Pet Damage Deposit

At the start of the tenancy the Tenant paid the Landlord a security deposit of \$550.00 and a pet damage deposit of \$275.00. The parties testified that the tenancy ended on July 31, 2017. The Landlord testified that he received the Tenant's forwarding address in writing on July 7, 2017. The Landlord applied for dispute resolution requesting to keep the deposits on August 16, 2017.

I find that the tenancy ended on July 31, 2017, and I find that the Tenant provided her forwarding address to the Landlord on July 7, 2017. At the end of the tenancy the Landlord already had the Tenant's forwarding address.

I find that the Landlord's application on August 16, 2017, to keep the deposits was late. I find that the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit and pet damage deposit. I order the Landlord to pay the Tenant the amount of \$1,650.00.

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 partially successful with their application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

After setting off the compensation of \$863.39 awarded to the Landlord against the compensation of \$1,650.00 awarded to the Tenant, I grant the Tenant a monetary order in the amount of \$786.61.

I order the Landlord to pay the Tenant \$786.61. The monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

### Conclusion

Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant \$1,650.00 which is double the amount of the security deposit and pet damage deposit.

The Landlord established a claim against the Tenant in the amount of \$863.39 for utilities, carpet cleaning, and window repair.

After setting off the awards, I grant the Tenant a monetary order in the amount of \$786.61.

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: March 29, 2018

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Residential Tenancy Branch