



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Remax Management Solutions  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for damages to the unit - Section 67;
4. A Monetary Order for compensation - Section 67;
5. An Order to retain the security deposit - Section 38; and
6. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on September 14, 2017 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Materials on September 19, 2017. The Landlord was given full opportunity to be heard, to present evidence and to make submissions. The Landlord confirms that the claim for an order of possession was made in error as the tenancy had ended before the application was made.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on September 1, 2015 for a fixed term to end August 31, 2016. Rent of \$1,450.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$725.00 as a security deposit. The Parties mutually conducted a move-in condition inspection with the report copied to the Tenant. In February 2018 the Landlord gave the Tenant a one month notice to end tenancy for cause (the "Notice"). The Notice contained an effective vacate date of March 31, 2016.

The reasons set out on the Notice are that the Tenant:

- is repeatedly late paying rent;
- or a person permitted on the property by the Tenant, has significantly interfered with or unreasonably disturbed another occupant of the landlord;
- has engaged in illegal activity that has, or is likely to damage the landlord's property or adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; and
- has not done required repairs to the unit or property.

The Tenant moved out of the unit sometime in March 2016. The Landlord contacted the Tenant about conducting the move-out inspection and the Tenant agreed to meet on March 31, 2016. The Tenant never showed up and despite several calls to the Tenant none were returned. The Landlord also contacted the previous co-tenant who was unable to attend the inspection and who informed the Landlord that the Tenant moved out of province.

The Landlord states that the Tenant left garbage behind and claims \$105.00 as the cost for its removal. The Landlord provides a receipt dated April 1, 2016. The Landlord states that the Tenant failed to leave the unit clean at move out. The Landlord claims the cleaning cost of \$400.00 and provides a receipt for this amount dated April 1, 2016.

The Landlord states that although the unit was noted on the move-in report as unclean at the outset of the tenancy the unit was cleaned by the Landlord sometime after the start of the tenancy in September 2016.

The Landlord states that the Tenant left the walls damaged and requiring paint. The Landlord claims the cost of \$1,750.00 to paint the entire unit. The Landlord provides photos of the walls of the unit. The Landlord states that the unit was last painted in August 2014.

The Landlord states that the Tenant damaged the dishwasher and claims \$371.90 as the cost of repairs. The Landlord states that it is believed the Tenant caused the damage by hitting the appliance. The Landlord provides an invoice that notes the damage appears to have been caused by a punch to the appliance.

The Landlord states that the Tenant left the outdoor deck with extraordinary stains and claims \$78.75 as the costs to power wash the deck. The Landlord provides a receipt for this amount dated April 29, 2016. It is noted that the move-in condition report indicates that the deck was dirty at move-in. The Landlord provided photos of the deck.

The Landlord states that the Tenant caused serious damage to the kitchen counter requiring its replacement. The Landlord claims \$1,890.02 and provides a receipt for this amount dated May 10, 2016. The Landlord provides photos of the counter.

The Landlord states that the police were called to the unit due to the Tenant's violence against a woman in the unit and that the police had to knock the door open to enter the unit. The Landlord states that following this incident the door was not functional and the entrance had to be secured with boards over the door pending the replacement door. The Landlord claims \$640.64 as the cost to replace the door. The Landlord provides an undated invoice for this claim and states that the invoiced amount was paid on April 16, 2016. The Landlord provides a photo.

The Landlord states that no keys to the unit were returned requiring replacement keys to both the front building door and the unit itself. The Landlord claims \$105.42 as the cost to replace the locks and provides a receipt for this cost dated March 31, 2016.

The Landlord states that the Tenant failed to return the fobs and remotes and claims \$300.00 as the cost for their replacement. The Landlord states that no refundable fee had been collected for these items nor was any replacement costs set out in the tenancy agreement. The Landlord states that in its past twenty years of experience it had never heard of such a thing. The Landlord provides a receipt dated April 12, 2016 for this cost. It is noted that this receipt does not indicate who issued this receipt or any company name or contact.

The tenancy agreement provides that “if the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term . . . the tenant will pay to the landlord the sum of \$625.00 as liquidated damages . . .”

The Landlord was unable to point to any specific term in the tenancy agreement as being a material term and states that the Tenant was repeatedly late making rent payments, significantly interfered with tradespersons trying to make repairs and damaged the property. The Landlord was provided with the meaning of a “material terms” following which the Landlord stated that it knew very well what a material term meant. The Landlord then pointed to section 7 of the tenancy agreement that provides that no pet deposit was payable. It also notes “no pets” in the pet deposit amount paid box. The Landlord states that the Tenant breached the strata rules that disallow pets. The Landlord was unable to give evidence of any reference to the strata rules or an attachment of a “form K” in the tenancy agreement.

In preparation for hearing the Landlord’s evidence on its claim for lost rental income for April 2016 the Landlord was read out the section of the Act that provides a requirement for mitigation efforts where claiming compensation for any loss. In response the

Landlord stated that the Tenant left the unit unclean and damaged and refused to allow the Landlord to show the unit during March 2016. The Landlord stated that as a result the unit could not be rented for April 2016. The Landlord stated that the unit was rented for May 1, 2016. It is noted that the Landlord gave no evidence in relation to any claim for unpaid rent.

The Landlord states that the Tenant did not provide any way for the Landlord to contact the Tenant after the end of the tenancy and that the Landlord had to hire a person to locate the Tenant. The Landlord claims \$1,155.00 as the costs of this locating service.

### Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results.

Given the photos of the unit showing garbage and a generally unclean unit, and given the undisputed evidence that the unit was cleaned shortly after move-in by the Landlord I find that the Landlord has substantiated that the Tenant breached the Act by failing to leave the unit reasonably clean. Given the invoices I find that the Landlord has substantiated an entitlement to the claimed amounts of **\$105.00** for the garbage removal and **\$400.00** for cleaning. Given the undisputed evidence of damage to the dishwasher and considering the invoice contain supporting evidence by the repair person of the likely cause of the damage I find that the Landlord has substantiated the costs claimed of **\$371.90**. Given the undisputed evidence of damage to the counter and considering the photos of the damage I find that the Landlord has substantiated that the Tenant purposely struck the counter leaving significant breaks in the granite. Given the

invoice indicating that the Landlord incurred the costs claimed I find that the Landlord is entitled to its claim for replacement of the counter in the amount of **\$1,890.02**. Given the Landlord's undisputed evidence that the door was broken by the police attempting to enter the unit in response to the Tenant's violence against a woman inside the unit I find that the Landlord has substantiated that the Tenant caused the door to be damaged. Given the invoice on costs I find that the Landlord has substantiated the replacement cost of **\$640.64**. Although the Landlord's evidence in relation to the replacement costs for the fobs is very weak, given that the Tenant did not dispute the claim or the supporting evidence for the claim I find that the Landlord is entitled to the costs claimed of **\$300.00**.

Given the lack of any discernable stains to the deck in the photos of the deck and considering that there is no evidence that the deck was clean at the outset of the tenancy I find that the Landlord has not substantiated that the Tenant failed to leave the deck reasonably clean in the circumstances. I note that the Landlord has already been compensated for the removal of the garbage from the unit that would include the garbage depicted by the photos on the deck. I therefore dismiss the claim for cleaning the deck.

As there is no evidence that the Tenant breached any part of the tenancy agreement by not providing its next residential address to the Landlord and as there is nothing in the Act that compels a tenant to provide its forwarding address or next residential address to a landlord after ending a tenancy I find that the Landlord has not substantiated an entitlement to the costs to locate the Tenant's address for service and I dismiss this claim.

Section 7 of the Act provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Although the unit was left unclean and with

damages I note that the cleaning occurred immediately after the move-out and that the most significant of the damages were to the kitchen counter that was replaced in May 2016 after the next tenant had already moved into the unit. As the Landlord provided no evidence of any attempt to exercise its rights to show the unit with notices to enter the unit in March 2016, provided no evidence of advertising the unit during any part of March or April 2016, and provided no evidence of the amount of rent being sought for the next tenancy, I find that the Landlord has not substantiated that it took reasonable steps to minimize its claim for the loss of rental income. I therefore dismiss the claim for lost rental income. As the Landlord provided no evidence in relation to any unpaid rent during the tenancy I dismiss the claim for unpaid rent.

Policy Guideline #40 provides that interior paint has a useful life of 4 years or 48 months. Based on the undisputed evidence that the unit was last painted in August 2014 I find that as of the end of March 2016 the paint should have had a remaining useful life of 29 months. Based on the undisputed evidence that the Tenant damaged the walls I find that the Landlord is entitled to compensation for the loss of the remaining 29 months in the amount of **\$1,057.29** ( $1,750.00 \times 29/48$ ).

Section 47 of the Act specifically allows a landlord to end a tenancy where a tenant fails to comply with a material term in a tenancy agreement and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. This breach is set out separately from other reasons for which a tenancy may be ended which may not be included in a tenancy agreement as material terms. Although given opportunity, the Landlord gave no evidence of any section of the tenancy agreement that was both material and breached for which the tenancy was ended other than the section on the "no pet" clause, however, there is no reference to any breach of this material term set out on the Notice that ended the tenancy. The Landlord provided no evidence of any written notice of a breach of a material term. As such I find that the Landlord has not substantiated that the tenancy was ended due to a breach of a material term by the Tenant and I dismiss the claim for liquidated damages.

As most of the Landlord's claims had merit I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$4,864.85**. Deducting the security deposit plus zero interest of **\$725.00** leaves **\$4,139.85** owed by the Tenant.

#### Inappropriate Behavior During Proceedings

Section 6.10 of the RTB Rules of Procedure provides that disruptions during the hearing will not be permitted. It further provides as follows:

The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the Arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

During the hearing the Landlord behaved in a thoroughly disrespectful manner. In particular, where the Landlord's evidence was questioned for clarity and relevance, the Landlord took an argumentative approach and his voice became increasingly rude, condescending and contemptuous towards the Arbitrator. Near the end of the hearing the Landlord became so hostile in his tone of voice that the Landlord had to be strongly cautioned that the Landlord would be excluded from the hearing if the behavior continued. Following the strong caution the Landlord ceased his behavior, changed his tone of voice and the hearing concluded with no further disturbance. I caution the Landlord to refrain from engaging in the same behavior at any future hearings as this behavior will not be tolerated and may result in exclusion from future hearings.

#### Conclusion

I Order the Landlord to retain the security deposit plus interest of **\$725.00** in partial satisfaction of the claim and I grant the Landlord a monetary order for the remaining amount of **\$4,139.85**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.



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: April 13, 2018

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Residential Tenancy Branch