



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR MND MNSD FF

### Introduction

This hearing was reconvened to address the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for unpaid rent, unpaid utilities, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The original hearing was adjourned to allow the tenant time to review all of the landlord's documentary evidence. Both parties attended on both hearing dates. Both parties were given a full opportunity to be heard, to present their testimony, and to make submissions. The tenant acknowledged receipt of the landlord's Application for Dispute Resolution package as well as the landlord's documentary evidence.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, unpaid utilities, and/or damage to the rental unit or other loss as a result of this tenancy? Is the landlord entitled to retain the tenant's security deposit towards any monetary award? Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

This tenancy began on March 29, 2015. The rental amount of \$1250.00 was payable on the first of each month. The tenant vacated the rental unit on October 31, 2017. The landlord continues to hold a \$625.00 security deposit and a \$500.00 pet damage deposit both paid at the outset of the tenancy (March 20, 2015). The landlord's most

recent amendment to her application sought a monetary amount of \$8408.28 from the tenant.

The landlord described the rental unit property as a 3-floor townhouse that she had lived in prior to renting it out. She testified that the property is approximately 20 years old and that she has rented out the property since 2013. The landlord testified that the tenant rented the entire residential premises including the downstairs portion of the townhouse. The landlord, however, also testified that she had a separate written tenancy agreement with the male tenant who resided in the downstairs unit. She explained that the downstairs male tenant was a friend of the upstairs tenant.

The landlord testified that the tenant did not pay rent at the end of the tenancy and rent remains outstanding totalling \$2850.00 as of the date of this hearing. She provided her rental payment ledger that showed the tenant had not paid full rent in August 2017, September 2017, October 2017 and November 2017. The landlord testified that \$1250.00 remains outstanding from August 2017; \$350.00 remains outstanding from September 2017; and \$1250.00 remains outstanding from October 2017. The tenant acknowledged that she had failed to pay 2 months of rent and that an additional \$350.00 remains in unpaid rent.

The landlord also sought to recover rental loss for November and December 2017 ( $\$1250.00 \times 2 \text{ months} = \$2500.00$ ) because the damage to the rental unit left by the tenants meant she was unable to rent out the unit for November and December 2017. The landlord testified that, as of the date of this hearing, she currently resides in the downstairs rental unit and repair and renovation work is ongoing in the upstairs portion of the residential premises.

The landlord submitted a copy of the residential tenancy agreement. In the rental payment portion of the agreement, it states that the tenant was responsible for 75% of gas and electricity utilities. An addendum to the residential tenancy agreement states that the tenant was required to pay her 75% of the utilities on the first of each month (when her rent was also due).

The tenant testified that she paid utilities until May 2017. Her electronic payment receipts show portions of the tenant's rent paid to the landlord but did not reflect utility bill payments. The tenant testified that she had expressed concern to the landlord about the increasingly high utility bills during the last 8 months of her tenancy (until October 2017). The tenant acknowledged that she owed a portion of the utilities at the rental unit. She calculated that she owed \$397.71 in unpaid utilities while the landlord

maintained that the tenant owed \$2433.58 in her portion (75%) of the utility bills. The calculation on the landlord's monetary order worksheet, submitted as evidence of the tenant's portion (75%) of the total utility amounts unpaid during the tenancy is \$2433.58.

In August 2017, the landlord sent a demand letter to the tenant requesting \$1993.96 for the tenant's 75% portion of utilities from January 1, 2016 to July 2017). Her demand letter indicated that copies of the utility bills were attached to the letter for the tenant. The landlord submitted copies of the electricity and gas bills for the January 2016 to October 2017) totalling \$2433.58. She testified to an additional \$439.62 in utility bills after sending the demand letter to the tenant. .

The landlord sought a monetary order as follows,

<b>Item</b>	<b>Amount</b>
Unpaid Rent: August \$1250.00, September \$350.00 & October \$1250.00	\$2850.00
Rental Loss: November 2017	1250.00
Utilities (75% of total of bills submitted October 2017)	2433.58
Damage – Bedroom (Paint Walls & Repair/Replace Floors)	623.96
Damage – Hall (Patch, Paint Walls and Repair Floors)	150.00
Damage – Floor (Hardwood throughout rental unit)	375.00
Damage – Garbage Removal (left by tenant)	598.04
Damage – Parts including toilet lever and cleaning supplies	42.08
Damage – mask for painting/sanding	10.62
Damage – Cleaning fee (labour)	75.00
<b>Total Monetary Order Sought by Landlord</b>	<b>\$8408.28</b>

The landlord testified that, at the end of this tenancy, she had to repair the floors within the townhouse, clean extensively, have the walls sanded, mudded and painted. She testified that the floors in the residential premises were extensively damaged – seemingly by urine and failure to clean up urine from the tenant's pet.

The landlord testified that she conducted a condition inspection and created a condition inspection report at move in. She testified that she also conducted a condition inspection at move-out but that the tenant was not present for the move-out inspection. She testified that, at move-out, she prepared the report herself. The landlord testified that the rental unit smelled strongly of urine when she attended to inspect the rental unit. She noted the smell in the report. The condition inspection report noted stains on

the entry carpet, the living room floor, the bathroom tub, and the bedroom carpets. The condition inspection report also noted missing blinds, an odor of smoke, an odor of urine, and marks on the walls, missing doors, items left in the garage and chips on the stairs within the unit.

The landlord testified that she did extensive work in an attempt to repair the floors and submitted that the tenants should pay \$375.00 of her costs in repairs. She provided receipts to show the costs. The landlord argued that the tenant should not only have to pay the repair costs but, ultimately, the repair job was not successful – the landlord testified she had to replace the floors. She submitted that the tenant should be responsible for a portion of that cost, as well.

The landlord testified that the floors and walls required extensive work at the end of the tenancy. She referred to the photographs that she submitted as evidence for this hearing showing worn and damaged floors with stains as well as wall damage in several areas of the home (including closets). She testified that most of the floor damage was a result of the tenant's pet urinating inside the home. The landlord submitted invoices for the work to clean and repair the unit including \$623.96 invoice in her company's name for ½ the cost of a laminate floor purchase (totalling \$424.00), a portion of the cost of materials to paint walls and install floors (receipts provided), 7 hours of her own labour at \$20.00 per hour.

The landlord testified that the front entrance was damaged – both floors and wall – and that she did her best to repair them at minimal cost. She submitted photographic evidence of the damage. She submitted that she should be entitled to \$150.00 from the tenants towards repairs at the entrance hall of the residential premises.

The landlord also testified that she also had to remove a substantial amount of refuse left in the shared storage area by the tenants. The tenants argued that the items in the storage were there when they moved in - that they only left a small portion of items that were to be picked up for donation.

The landlord also submitted an invoice for \$598.04 in her own company's name. That invoice totalled \$598.04. The receipt itemized 7 hours of labour at \$40.00 per hour; an additional \$80.00 in a flat rate for labour; 4 trips to the waste station to dispose of items left in the rental unit and storage area; and truck rental to take items to the waste station at \$89.04. The landlord provided copies of the truck rental cost (\$89.04) and the four waste station receipts.

The landlord provided receipts and claimed costs for the replacement of a toilet lever and cleaning supplies including a drain-unclogging tool and bleach. The total receipt submitted from a hardware store was \$268.38 however the landlord separated out the items she sought to recover from the tenant totalling \$42.08. The landlord submitted a separate receipt totalling \$54.06 with the cost of a mask for painting and sanding highlighted in the amount of \$10.62.

The landlord testified, referring again to her photographic evidence, that the rental unit was very dirty at the end of tenancy. The landlord also referred to the condition inspection report that showed most items in fair to good condition at the start of the tenancy and dirty at the end of the tenancy. She testified that she spent over two days cleaning the rental unit. She submitted that she should be entitled to \$75.00 for cleaning the rental unit.

The tenant submitted that the landlord has inflated her costs. She testified that the business named in the invoices for flooring, wall repair and cleaning is the landlord's business name. The landlord did not dispute the tenant's submissions with respect to her business: she testified that she made efforts to reduce costs by using her own company, doing repairs herself and valuing her labour at a lower amount than she would normally charge.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord originally applied to retain the tenant's security and pet damage deposit towards a total monetary amount of \$5493.96. She amended her application more than once. The most recent amendment filed by the landlord prior to the commencement of this hearing sought to recover a total of \$8408.28 from the tenant. According to the *Act* and the Regulations, a condition inspection report is often the best evidence of the condition of the unit at the end of the tenancy. In this case, the condition inspection report at move-out noted missing blinds, an odor of smoke, an odor of urine, marks on

the walls, missing doors, items left in the garage and chips on the stairs within the unit as well as extensive damage to the floors in urine stains. I accept the condition inspection report for move-out submitted by the landlord as well as the photographs of the rental unit at the end of this tenancy to support her application to recover costs for damage to the unit by the tenants.

I accept the testimony of both parties and particularly the agreement by the tenant that she owes unpaid rent totalling \$2850.00 as of the date of this hearing. Based on the testimony of both parties and supporting documents, I find that the landlord is entitled to recover \$2850.00 in unpaid rent. The landlord also sought to recover rental loss for November 2017 however the landlord testified that she moved into the rental unit during the repairs and additional renovations – that she does not intend to re-rent the unit. Therefore, I find that the landlord is not entitled to rental loss for November 2017. I also note that the landlord sought and issued an Order of Possession to the tenant requiring the tenant to vacate the rental unit.

The tenant acknowledged that she owed an amount in unpaid utilities however she disagreed with the landlord on the amount that remains unpaid for utilities. The landlord testified that the tenant owes \$2433.58 in unpaid utilities while the tenant testified that she had paid all utility bills prior to May 2017 and owes only \$397.71. I have reviewed the bills submitted for this hearing and I accept the evidence and testimony of the landlord that the landlord accurately calculated utility bills during the course of the tenancy. Further, I accept the evidence in the residential tenancy agreement and its amendment regarding utilities: that the tenant agreed to pay 75% of the utilities during the course of the tenancy. I find that the landlord is entitled to \$2433.58 in unpaid utilities.

I find that the landlord has provided evidence of the need for repairs at the end of this tenancy and I accept the landlord's submissions and supporting evidence to show that she minimized the costs to the tenant by undertaking the work herself and by only charging the tenant for a portion of her labour and materials. However, I note that hardwood floors and gypsum board (as well as painting) were the primary items in the hall to be repaired and that those items have a useful life of approximately 20 years. The landlord testified that the rental unit is approximately 20 year old and, therefore in accordance with Residential Tenancy Policy Guideline No. 40 (useful life guidelines for residential rental premises), the floors and walls was likely due for repair regardless of any damage done by the tenants.

I find that the landlord testified is entitled to a portion of the cost of repair (and ultimately replacement) of the floors. I accept her costs as described in her invoice totalling \$632.96. As stated above, the useful life guidelines suggest that these floors were at the end of their useful life. I find that the landlord is not entitled to those costs, considering the age of the premises. I also note that the landlord has chosen to take on extensive renovations and replacement of items in her home at a higher cost.

I find that the landlord is entitled to a cost for removal of items from the shared storage area by the tenants. I accept the landlord's testimony that the storage was not full of previous tenants' belongings prior to the start of this tenancy however I note that the landlord had her own belongings in the storage unit as well. Given all of the evidence by both parties, I find that the shared storage unit held items from the landlord and the tenants. The photographic evidence may reflect items from both parties. Therefore, I find that the landlord is entitled to partial reimbursement for refuse disposal by the tenants. The landlord is entitled to \$299.00 in waste disposal and related costs. (1/2 of the total invoices submitted by the landlord).

I find that the landlord is entitled to the cost of replacement of a toilet lever and cleaning supplies including a drain-unclogging tool and bleach. These expenses stemmed directly from damage done during the course of the tenancy. Therefore, I find that the landlord is entitled to \$42.08 as well as \$10.62 for the cost of her mask for painting and sanding. Finally, given that the landlord has shown the tenants left the rental unit in poor condition and that she cleaned herself for several hours, I find that she is entitled to recover \$75.00 for cleaning the rental unit.

The landlord is entitled to a monetary order as follows,

<b>Item</b>	<b>Amount</b>
Unpaid Rent: August \$1250.00, September \$350.00 & October \$1250.00	\$2850.00
Utilities (from 2016 to end of tenancy October 2017)	2433.58
Damage – Garbage Removal	299.00
Damage – Parts including toilet lever and cleaning supplies	42.08
Damage – mask for painting/sanding	10.62
Damage – Cleaning fee (labour)	75.00
Less Pet Damage Deposit	-500.00
Less Security Deposit	-625.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order to Landlord</b>	<b>\$4685.28</b>

As the landlord was successful in her application, I find the landlord is entitled to recover her filing fee.

Conclusion

I issue a monetary order to the landlord in the amount of \$4685.28.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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.

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: May 04, 2018

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Residential Tenancy Branch