



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MND, MNDC, FF*

### **Introduction**

This hearing dealt with an application by the landlords pursuant to the *Residential Tenancy Act* for a monetary order for loss of income, for the cost of replacing a fireplace and light bulbs, for the cost of cleaning and painting and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

At the start of the hearing the tenant informed me that she had made a cross application for the recovery of double the security deposit and for the cost of firewood, but her application was not crossed with the landlords' application due to insufficient time. At first the tenant requested an adjournment so that the applications of both parties could be heard together. The landlords objected to having their hearing adjourned.

I attempted to get the parties to come to an agreement to settle this dispute and end it during today's hearing, which would mean that they did not have to attend a second hearing in October 2018. The parties could not come to an agreement on the net amount of their monetary claims. I also offered to hear both parties but the tenant stated that she needed to file additional evidence prior to being heard.

I found that the prejudice to the landlord in the event of an adjournment would be greater than that to the tenant if the hearing proceeded. Accordingly the hearing proceeded as scheduled on May 02, 2018. However, since the landlord has also applied to retain the deposit and for the cost of wood for which the tenant has also made application, I found that it would be beneficial to both parties to have these claims heard together during the tenant's application on October 23, 2018. The remainder of the landlords' application was heard on this date.

### **Issues to be decided**

Are the landlords entitled to a monetary order to recover loss of income, the cost of replacing a fireplace and light bulbs, the cost of cleaning and painting and the filing fee?

### **Background and Evidence**

The tenancy started on September 01, 2016 for a fixed term of one year ending August 31, 2017. The monthly rent was \$870.00 payable on the first of each month. Prior to moving in the landlords collected a security deposit of \$435.00 plus the rent for August 2017, the last month of tenancy. A copy of the tenancy agreement was filed into evidence. An addendum attached to the agreement states that the tenants are responsible for keeping the yard clean and tidy.

The landlord testified that on August 31, 2017, he met the tenants at the rental unit, to conduct a move out inspection and to gain possession of the rental unit. He had made this appointment with the tenants in advance. However when the landlords got there, both tenants refused to participate in the move out inspection and demanded the return of the deposit. The tenant agreed that she refused to participate in the inspection and stated that they were tired after a long day of moving their belongings, were in a rush to catch a ferry and had their young child with them. The landlord testified that the male tenant swore at him and they left without providing the landlord with a forwarding address.

The landlords proceeded to conduct the move out inspection in the absence of the tenant, created a report and took photographs. The landlords filed a copy of the report and the photographs into evidence.

The landlord stated that he received the tenants' forwarding address by registered mail in a letter dated September 19, 2017. The landlord received this letter on September 23, 2017 and made this application on October 03, 2017.

The landlord stated that there was a wood stove in the rental unit that the tenants were permitted to use as long as they did not use beach wood for firewood. In October 2016, the landlord found out that the tenants had used beach wood in the stove and requested the tenants by email, to refrain from doing so. The tenants replied by email and agreed not to use beach wood as firewood.

At the end of tenancy, the landlord found the wood stove badly damaged and rusted. The landlord stated that the rust came from the use of beach wood and the other damage was from the wood box being full of ash and used prior to emptying out the ash. The landlord filed photographs of the damage to the stove and stated that the stove was beyond repair and had to be replaced. The landlord also filed proof of having replaced the stove at a cost of \$1,901.63 but was claiming \$855.73 after depreciation.

The tenant stated that the stove was old and damaged at the start of tenancy and that there were signs that prior tenants had used beach wood as firewood.

The landlord is also claiming the cost of replacing a toilet handle but withdrew this claim after agreeing that the broken handle could be a result of wear and tear.

The parties gave contradictory testimony regarding the light bulbs in the rental unit at the end of tenancy. The tenant stated that she had replaced all of them. The landlord provided photographs of light fixtures without light bulbs, to support his testimony.

The landlord stated that the wooden floor near the entrance was stained and he had to paint the wood to restore the colour. The tenant stated that it was due to wear and tear. The landlord filed a photograph showing a distinct staining of the wood and an invoice to support his testimony regarding the cost he incurred to purchase the stain.

The landlord was claiming \$60.00 for labour to replace the toilet handle and the light bulbs and to paint the wooden floor by the entrance. The landlord dropped this claim to \$50.00 because he agreed that the broken toilet handle was due to normal wear and tear and was not the responsibility of the tenant.

The landlord stated that on August 31, 2018, the tenants moved their belongings out and left without cleaning the rental unit, as they were in a rush to board a ferry. The landlord found that the floors had not been swept or mopped, the windows, window tracks and sills were dirty, the cabinets, shelves and appliances were not wiped down and the fire stove was full of ashes. The landlord filed photographs that depict the condition of the rental unit at the end of tenancy and that support his verbal testimony.

The landlord stated that he spent a considerable amount of time cleaning the rental unit and after a few days, there was a foul odour inside the unit which got steadily stronger. The landlord found a Ziploc bag of fish filets in the corner of a lower shelf in the kitchen and disposed of it. The landlord stated that he assumed that the Ziploc bag may have accidentally fallen out of sight.

The landlord stated that despite throwing away the rotting fish, the odour did not go away and kept getting worse. The landlord checked the entire unit and found a package behind the claw foot of the bath tub that contained rotting fish, a dead rat, a rotting milk carton and other garbage. After disposing of this package, the landlord conducted an extensive search and found two more bags containing rotting fish. The landlord filed photographs of these bags which depict rotting fish full of mould and maggots.

The landlord also stated that being summer the bad odour in the rental unit was intense and during the multiple showings in early September, prospective tenants did not get back to him and therefore he was unable to find a tenant for September 2017. The landlord is claiming \$870.00 as loss of income and \$380.00 for his time spent cleaning.

As per the addendum to the tenancy agreement the tenant was required to keep the yard neat and tidy. The landlord filed photographs showing the yard was overrun with weeds and was untidy. The landlord is claiming \$100.00 for his time spent to clean up. The tenant denied having seen the addendum and stated she was not aware of having to maintain the yard because the landlord mowed the lawn. The landlord lives next door and stated that the tenant did not maintain the yard, so he helped out.

The landlord is claiming the following:

1.	Replace wood stove	\$855.73
2.	Replace toilet handle	\$20.15
3.	Replace light bulbs	\$28.20
4.	Paint floor in entry area	\$36.71
5.	Cost of labour	\$60.00
6.	Cleaning	\$380.00
7.	Yard work	\$100.00
8.	Garbage disposal	\$15.00
9.	Loss of income + cost of wood	\$950.00
10.	Filing fee	\$100.00
	<b>Total</b>	<b>\$2,545.79</b>

### **Analysis**

#### **1. Replace wood stove - \$855.73**

Based on the testimony of both parties and documentary evidence, I find that in an email dated October 20, 2016, the tenant agreed not to use beach wood as firewood. The photographs taken at the end of tenancy indicate that the fire box was full of ash.

The landlord stated that attempting to use the wood stove by putting more wood into a firebox filled with ash, would damage the air tubes and baffles inside the wood stove.

The landlord filed photographs showing the broken and damaged air tubes and baffles and stated that the damage to the stove was so extensive that the stove was rendered inoperable and beyond repair. The landlord had to replace the stove and provided proof of the cost he incurred.

Section 40 of the *Residential Tenancy Policy Guideline* addresses the useful life of an item. I will use this guideline to assess the remainder of the useful life of the wood stove. As per this policy, the useful life of a similar heating system is 20 to 25 years. The landlord provided a copy of an email from the manufacturer of the stove that states that the life of the stove is 20 plus years.

For the purpose of determining the remainder of the useful life of the stove I will use 20 years as the useful life. The stove was manufactured in September 2006 and therefore at the end of tenancy in August 2017, the stove was 11 years old and accordingly had 9 years of useful life left. Based on these parameters and the cost to replace the stove (\$1,901.63), the value of the remainder of the useful life of the wood stove is approximately \$855.72.

I accept the landlord's evaluation of the balance of the useful life of the stove at the end of tenancy. However, the tenant alleged that the prior tenants had also used beach wood as firewood and therefore some of the responsibility for the damage to the stove could be attributed to the prior tenants. Based on the above, I find on a balance of probabilities that it is possible that the prior tenants used beach wood as firewood and accordingly in the interest of fairness to both parties I award the landlord a portion of his claim and I base this award on the consideration of the evidence, testimony, useful life, and wear and tear.

Based on all the photographs, invoices and copies of emails filed into evidence and the testimony of both parties, I find on a balance of probabilities that it is more likely than not that the tenants used beach wood as firewood in the early part of tenancy and failed to remove the ash buildup in the fire case on a regular basis. These factors contributed to the demise of the wood stove. Taking into consideration that the prior tenants may also have used beach wood as fire wood, I award the landlord \$700.00 towards the purchase of the replacement wood stove.

## 2. Replace toilet handle - \$20.15

The landlord agreed that the damage to the toilet handle may have been due to normal wear and tear and accordingly the landlord decided to waive this claim.

3. Replace light bulbs - \$28.20
4. Paint floor in entry area - \$36..71

The landlord provided adequate proof to support claims #3 and #4 and accordingly I award the landlord his claim for these items in full.

5. Cost of labour - \$60.00

The landlord agreed to lower this claim to \$50.00 for the time spent replacing bulbs and painting the entry area. Based on the testimony of both parties and the documents filed into evidence, I find that the landlord has proven his claim.

6. Cleaning - \$380.00

The landlord filed photographs of the condition of the rental unit at the end of tenancy and described the source of the odor that prevailed in the rental unit. I find it appalling that bags of rotting fish and other garbage were hidden in different areas of the home resulting in a disgusting odor prevailing and continuing to linger inside the rental unit. The landlord is entitled to his claim.

7. Yard work - \$100.00

Even though the tenant stated that she had not seen the addendum, she had signed the tenancy agreement in acknowledgement of having received the addendum. The landlord filed photographs of the condition of the yard at the end of tenancy. I find that the landlord has proven his claim.

8. Garbage bags - \$15.00

Given the bags of rotting fish left hidden inside the rental unit, I find the landlord's claim for garbage bags is reasonable.

9. Loss of income + cost of wood - \$950.00

The landlord's claim for the cost of wood in the amount of \$80.00 will be heard along with the tenant's claim for the cost of wood.

The landlord testified that he was unable to rent the unit for the month of September due to the lingering odor of rotting fish in the early weeks of September. The landlord testified that he had multiple showings but the prospective tenants did not return even though the house is located in a desirable area. Eventually the landlord was able to find a tenant for October 2017.

Based on the testimony of both parties, I find that the landlord had to clean up the unit and deodorize it before he could get interest from prospective tenants.

The landlord also had showings prior to the tenants moving out. Based on the testimony of both parties and the documents and photographs filed into evidence, I find that the unit was uninhabitable for at least 15 days in the month of September.

Since the tenancy was a fixed term tenancy which ended on August 31, 2018, I find that the tenant is not responsible for any loss of income that the landlord may have suffered in September. However in this case, I have determined that due to the actions of the tenants which included leaving behind bags of rotting fish hidden out of sight, the rental unit was uninhabitable for at least 15 days until the unit was rid of the lingering odor of rotting fish. I find that the actions of the tenant caused the landlord to suffer a loss of income for the period during which the unit was uninhabitable.

Therefore I award the landlord a half month's rent in the amount of \$435.00 toward the loss of income that he suffered.

Filing fee - \$100.00

The landlord has proven most of his case and therefore is entitled to the recovery of the filing fee of \$100.00.

Overall the landlord has established a claim as follows:

1.	Replace wood stove	\$700.00
2.	Replace toilet handle	\$0.00
3.	Replace light bulbs	\$28.20
4.	Paint floor in entry area	\$36.71
5.	Cost of labour	\$50.00
6.	Cleaning	\$380.00
7.	Yard work	\$100.00
8.	Garbage disposal	\$15.00
9.	Loss of income + cost of wood	\$435.00
10.	Filing fee	\$100.00
	<b>Total</b>	<b>\$1,844.91</b>

I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for \$1,844.91. This order may be filed in the Small Claims Court and enforced as an order of that Court.

**Conclusion**

I grant the landlord a monetary order in the amount of \$1,844.91.

The portions of the landlord's application regarding the security deposit and the cost of firewood will be dealt with along with the tenant's application for dispute resolution which is scheduled to be heard on October 23, 2018.

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 08, 2018

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Residential Tenancy Branch