



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MND, MNR, MNSD, FF

### Introduction

On February 18, 2018, the Landlord submitted an Application for Dispute Resolution for a monetary order for money owed or compensation for damage or loss; for damage to the rental unit; to recover unpaid rent; to keep the security deposit; and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Landlords and Tenant attended the hearing. At the start of the hearing I introduced myself and the participants. The Landlords 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.

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

- Are the Landlords entitled to compensation for damage to the rental unit?
- Are the Landlords entitled to compensation for a loss of rent or utilities?
- Are the Landlords authorized to keep the security deposit and/or pet damage deposit?

### Background and Evidence

The parties testified that the tenancy began on August 10, 2016. The Tenant is to pay the Landlord monthly rent in the amount of \$1,100.00 by the first day of each month.

The Tenant paid the Landlord a security deposit of \$550.00 and a pet damage deposit of \$100.00. The Tenant moved out of the rental unit on January 31, 2018.

The Landlord is seeking compensation for the following items:

Garage Door	\$1,148.70
Loss of Rent	\$1,100.00
Hydro	\$229.62
Total	\$2,478.32

### Garage Door

The Landlord testified that the Tenant is responsible for damage to the garage door. The Landlord testified that on November 30, 2017, the Tenant backed her car into the driveway and struck a boat trailer causing it to roll into the garage door and cause damage. The Landlord testified that the boat has always been parked there.

The Landlords testified that they attempted to repair the door; however, the door is damaged structurally and needs to be replaced. The Landlord testified that the door can be still be opened and closed with care and attention. The Landlord has not had the door replaced but has provided a quote for the replacement cost.

The Landlord testified that the house was built in 1960 and the garage door could be original.

In reply, the Tenant testified that it was an accident. She testified that the trailer hitch is low and not visible, and the lighting in the driveway is poor. The Tenant submitted that the wheel blocks on the trailer were inadequate.

The Tenant submitted that it was a mistake and she does not feel she is responsible to pay any amount for the damage to the garage door.

### Rent for February 2018

The Landlord testified that the Tenant did not give adequate notice to end the tenancy.

The Landlord testified that they received notice from the Tenant on January 22, 2018, and the Tenant moved out nine days later on January 31, 2018. The Landlord testified that since they were not given proper notice, they were unable to rent the unit out for the month of February 2018, and they suffered a loss of rent.

The Tenant testified that she moved out without giving the proper notice because the Landlord gave her a frightening letter and she needed to move out immediately. The Tenant testified that the Landlord sent her a letter threatening eviction.

The Tenant testified that she never paid any rent for February 2018.

### Hydro

The Landlord testified that the tenancy agreement requires the Tenant to pay for her use of the hydro utility. The Landlord testified that there is a separate hydro meter for the rental unit and the Landlord calculates the Tenant's usage and provides an invoice for payment.

The Landlord testified that the Tenant owes \$229.62 for the period of November 18, 2017, until January 31, 2018.

In response, the Tenant testified that she was confused at how the Landlord determined the amount of her use of the hydro utility. She submitted that the meter is located in the Landlord's area of the rental property. She testified that she needed to ask if she wanted to check the meter. She testified that she did previously check the meter and asked the Landlord for an explanation on the hydro costs and then she paid the bill.

She submitted that she did not have control of the bathroom exhaust fan, which uses hydro, because the Landlord pre-programmed the fan to operate for two hours twice a day. She testified that the Landlord told her to not change the exhaust fan settings.

In reply the Landlord testified that the rental unit is partially below grade. He testified that the exhaust fan is set up to operate on occasion to mitigate against damage from moisture and mold growth. The Landlord testified that this was explained to the Tenant at the start of the tenancy.

The Tenant testified that at the end of the tenancy, she agreed that the Landlord could retain the amount she owes for hydro utility from the deposits.

### Security Deposit and Pet Damage Deposit

The Landlords are seeking to keep the security deposit of \$550.00 and pet damage deposit of \$100.00 in full or partial satisfaction of their claims.

### 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.*

*An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:*

*“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

*A party seeking compensation should present compelling evidence of the value of the damage or loss in question.*

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, and on a balance of probabilities, I find as follows:

### Garage Door

The Residential Tenancy Policy Guideline # 16 Useful Life of Building Elements is intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. When applied to damage(s) caused by a Tenant, the arbitrator may consider the useful life of a building element and the age of the item. The Guideline provides that a garage door and operator has a useful life of 10 years.

I find that the Tenant is responsible for the damage to the garage door. The Tenant's inattention while driving on the rental property caused the collision and resulting damage. I find that the garage door is approximately 50 years old. Although the useful life of the garage door has expired, I find that the garage door was operational and in good condition prior to the accident. I find that the garage door had some value to the Landlord operationally and aesthetically.

In the circumstances, since the Tenant is responsible for damage to the door and the Landlord has suffered a loss, I find that it is appropriate to award the Landlord a nominal award.

I grant the Landlord the amount of \$200.00 towards the replacement cost of the garage door.

#### Rent for February 2018

I find that the Tenant failed to provide the Landlord with the proper notice to end tenancy pursuant to section 45 of the Act. The Tenant ended the tenancy by moving out of the rental unit earlier than one month after the date the Landlord received the Notice. The letter received by the Tenant does not entitle the Tenant a legal right to move out of the rental unit without giving proper notice.

In the circumstances, the Landlord is entitled to be in the same position as if the tenancy was ended properly. The Landlord suffered a loss of rent. The Tenant is responsible to pay the Landlord \$1,100.00 for February 2018, rent.

#### Hydro

I find that the tenancy agreement requires the Tenant to pay for her use of hydro. The Tenant could ask to see the hydro meter, and did so on one occasion, and chose to pay the bill. The Tenant paid the previous hydro bills and took no action to dispute the hydro arrangement during the tenancy.

I find that the Tenant failed to pay for use of the hydro utility at the end of the tenancy. I find that the Tenant owes the Landlord the amount of \$229.62 for hydro for the period of November 18, 2017, to January 31, 2018.

#### Security Deposit

I find that the Landlord can retain the security deposit of \$550.00 and pet damage deposit of \$100.00 in partial satisfaction of the awards.

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

The Landlords have established a monetary claim in the amount of \$1,629.62. After setting off the security deposit and pet damage deposit of \$650.00 against the award of \$1,629.62 I grant the Landlords a monetary order in the amount of \$979.62. The order must be served on the Tenant and may be enforced in the Provincial Court.

### Conclusion

The Landlords claim for damage to the rental unit and unpaid rent and utilities was successful.

The Landlord established an award of \$1,629.62.

After setting off the security deposit and pet damage deposit and applying the recovery of the filing fee, I find that the Tenant owes the Landlord the amount of \$979.62. I grant the Landlord a monetary order in the amount of \$979.62.

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: September 19, 2018

---

Residential Tenancy Branch