



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNDC MNSD FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage to the rental unit pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. No issues were raised with respect to the service of the application and evidence on file.

### Issues

Is the landlord entitled to a monetary award for compensation for damage and/or loss?  
Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?  
Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all the details of the submissions and/or arguments are reproduced here.

The tenancy for this residential house began on August 1, 2016 and ended on January 31, 2018. The monthly rent prior to the end of the tenancy was \$2177.70. The tenant paid a security deposit of \$1050.00 at the start of the tenancy which the landlord continues to hold.

The landlord submitted a "monetary order worksheet" which provides a detailed breakdown of the landlord's claims totaling \$10,143.90. The landlord testified that the tenant left the rental unit in a state of uncleanness and disrepair. The landlord submitted a move-in and move-out condition inspection report, various "before" and "after" pictures, witness statements and correspondence between the parties in support of the claim. The landlord also submitted receipts, invoices and estimates in support of each of the detailed items as per the monetary order worksheet.

The landlords' claims as set out on the Monetary Order Worksheet are as follows

Item #1: A claim totalling \$5922.00 for an invoice related to repair of a basement bedroom, basement laminate repair, upstairs hardwood repair, upstairs bathroom repair, foam removal, and garbage removal.

The landlord submits the tenant caused significant damage to the laminate flooring in the basement from pet urine. The landlord submits that they had 1 ½ boxes of left over laminate from the original install but it was not sufficient to cover all the damage. The landlord provided an invoice supporting that this flooring was installed newly in October 2015.

The upstairs oak floor also had damage from pet urine and from screws and nails. The landlord submits the tenant attempted to sand the area of the damage. The landlord submitted an invoice showing this oak floor had been refinished in November 2015. The landlord submits the tenant also put nails and screws into this flooring in all the upstairs rooms. The landlord is claiming the costs to repair a portion of this flooring and depreciation for the areas that were not repaired.

The landlord submits the garage floor had significant amounts of car oil on it which required cleaning. The landlord submits there was significant damage to the walls in the basement bedroom from the removal of wallpaper. A piece of drywall was missing from the upstairs bathroom. There were cat scratches on bathroom and hallway drywall and most of the vertical wood moulding upstairs.

The landlord submits the tenant also utilized copious amounts of spray foam throughout the house which they had to get removed.

Item #2: The landlord is claiming \$178.39 as an estimate for depreciation of the unrepaired portion of the upstairs oak floor. The landlord submits it was not cost effective to repair all the damaged areas of the floor and is instead just claiming the amount for which they believe the flooring was devalued.

Item #3: The landlord is claiming \$483.00 for having to emergency pump the septic tank due to a back-up reported by the tenant in August 2017. The landlord submits that prohibited items were found in the tank clogging the system. The landlord submitted the invoice on which the technician reports finding tampons, pads and condoms etc in the septic tank. The landlord submits that the septic was last pumped at the end of September 2015. The landlord submits the tenancy agreement clearly stipulates a list of prohibited items.

Item #4: The landlord is claiming an amount of \$562.50 for landlord's costs for repair and cleaning work. This included repair and replacement of blinds, pressure washing front and back deck, washing windows, cleaning garage, cleaning walls and mouldings, cleaning floors, removing excess soil added to garden beds and repairing a screen door. The landlord submits the tenant attempted to shorten two of the blinds leaving them unrepairable and two of the blinds that were also shortened were repairable. The landlord submits the screen door was new and was left with a hole at the end of the tenancy. The landlord submits the decks were covered in algae.

Item #5: The landlord is claiming \$475.00 in the landlord's labour costs to rehab the garden. The landlord submits that despite the lease stipulating that the landscaping is the responsibility of the landlord; the tenant hacked or nibbled away at various plants from the beginning of the tenancy. The landlord submits the tenant continued to cut plants after being advised in writing and in person to not do so as early as 6 weeks into the tenancy. The landlord submits that as a result several plants were left significantly damaged requiring additional labour to retrain and/or remove plants.

Item #6: The landlord is claiming loss of rental income in the amount of \$1633.28. The landlord submits that this constitutes loss for the 3 week period after the end of the tenancy during which repairs work was required. The landlord testified that the next tenants were not able to take possession until February 22, 2018.

Item #7, #8, #9, #10, #11 and #12: The landlord is claiming a total of \$236.57 for costs to replace or repair these items which include a light cover, door hinge, garage door damage, stove damage, screen door material, and replacement of a plant. The landlord submits the light cover was missing which the tenant stated she broke during the move. The landlord submits a hinge from a kitchen pantry was missing. The landlord submits the entry door to the garage had a large dent in it. The stove which was only 5 months old at the beginning of the tenancy was chipped and scratched. The landlord is only claiming depreciation due to damage to the door and stove. The screen door had a hole in it requiring the purchase of a new screen.

Item # 13, #14: The landlord is claiming a total of \$196.47 for costs to replace missing firewood and three decorative metal wall art pieces from the concrete patio wall. The landlord submits the wall art was replaced by a metal plant hanger which belonged to the tenant. The landlord submits a large portion of firewood stored under the deck was also missing. The landlord submits the tenant was never authorized to dispose of the firewood and admitted to doing so in a recording submitted.

Item #15: The landlord is claiming \$546.69 for unpaid utilities. The landlord submitted copies of bills for these amounts. The landlord submits that as per the tenancy agreement, the tenant is responsible for 66.25% of the utilities and the tenant failed to pay her portion for the last 1 ½ months of the tenancy.

In response to the landlord's application, the tenant also submitted various pictures of the condition of the rental unit at the end of the tenancy as well as witness statements from various contractors and correspondence between the parties.

The tenant testified that she did put nails in some of the corners of the upstairs flooring to prevent squeaking. The tenant submits that the floor is 35 years old and there were already some nails in it.

The tenant testified that the drywall damage in the bathroom was just a small cut out piece. The tenant acknowledged the drywall was also scratched by her cat but that she filled the scratched with putty. The tenant submits that her girlfriend also offered to paint but that she required matching paint and was ordered by the landlord to not do any painting.

The tenant testified that the master bedroom drape didn't fully cover the window so she put up a new one which she took down upon move out. She couldn't put the old one back up so she laid it on the floor.

The tenant testified that the items allegedly found in the septic were items that she did have or hasn't had for years.

The tenant testified that she cleaned the rental unit and that her pictures support it was cleaned.

The tenant testified that the decks were just dirty from the gutters being cleaned and it was only dirt on the decks.

The tenant acknowledged the cat put a hole in the screen door.

The tenant acknowledged that the light cover fell and broke but she was ordered not to make any repairs.

The tenant testified that she took the utilities out of her name prior to the end of the tenancy as it was unconscionable that she had the full utilities in her name as there was another tenant on the property.

The tenant testified that she did remove the wallpaper in the bedroom but couldn't finish taking it down as she was told not to.

In reply, the landlord submits that the tenant nor her girlfriend were professional painters and the other contractors referred by the tenant did not have active WorkSafeBC coverage which is why the landlord requested the tenant not do any repairs. The landlord submitted documentation from WorksafeBC showing these contractors did not have active clearance.

### Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Section 37 of the Act requires 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.

The landlord provided very detailed testimony and documentary submissions for each of the items #1 through #15 as per the monetary order worksheet. In response, the tenant provided very brief testimony by which she acknowledged being responsible for some of the claims made by the landlord, disputed some and provided no testimony or argument with respect to a significant portion of the landlord's claims. Aside from her testimony, the tenant provided no detailed submissions with respect to how or which of the various pictures or other documentary evidence submitted supported her arguments.

The tenant acknowledged putting nails in the upstairs floor. The tenants claims the floor was 35 years old; however, the landlord is not seeking costs to replace the entire floor. The landlord is only claiming costs to repair the damaged portions and depreciation based on recent refinishing costs. The tenant acknowledged a drywall piece was cut out and scratches to the drywall from her cat. Regardless if the tenant allegedly filled these scratches with putty, the landlord would still have suffered a loss required to fully repair and re-paint the walls. I find the landlord was within its right to require a professional contractor with active WorksafeBC coverage to do the repair work.

With respect to the items found in the septic tank, I find that given the septic was cleaned approximately one year prior to the tenancy and was again required to be pumped one year into the tenancy, it is more likely than not that the prohibited items found belonged to the tenant.

The tenant acknowledged damage to the screen door from her cat as well damage to the light fixture.

The tenant's argument with respect to the utilities being in her name being unconscionable is without merit. Even though it may have been unconscionable to have the entire utilities in the tenant's name the utilities amounts were still reconciled and the other tenant paid her share. The tenant was still required to pay her share of the utilities and she did not dispute that they remained unpaid.

Based upon the testimony of the parties and the documentary evidence submissions, I find that the tenant did not leave the rental unit reasonably clean and undamaged at the end of the tenancy.

The landlord submitted receipts, invoices and estimates in support of each of the detailed items of claim as per the monetary order worksheet.

I find the landlord has established a loss as claimed in the amount of \$10,143.90.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$10,243.90.

The landlord continues to hold a security deposit in the amount of \$1050.00. I allow the landlord to retain the security deposit and pet deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$9,193.90.

#### Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$9,193.90. 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: November 13, 2018

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Residential Tenancy Branch