



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LOCKE PROPERTY MGMT. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Code MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

The landlord’s agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on October 26, 2018, a Canada post tracking number was provided as evidence of service. The Canada post tracking number shows the tenant received the package on October 30, 2018. I find the tenant was duly served in accordance with the Act. The Canada post tracking number was provided as evidence. The tracking number has been noted on the covering page of this decision.

The landlord’s agent testified that their evidence package was provided to the tenant sent by registered mail on February 5, 2019 a Canada post tracking number was provided as evidence of service. The Canada post tracking number shows the tenant received the package February 7, 2019. I find the tenant was duly served in accordance with the Act. The Canada post tracking number was provided as evidence. The tracking number has been noted on the covering page of this decision.

The landlord’s agent appeared gave testimony and was 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 evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on October 1, 2014. The tenancy agreement was amended in January 2016, removing the male tenant from the tenancy agreement. Current rent in the amount of \$986.00 was payable on the first of each month. The tenant paid a security deposit of 462.50. The tenancy ended on or about September 30, 2018.

The landlord's agent testified that the tenant on the agreement did not end their tenancy and allowed their daughter to reside in the rental as an occupant. The agent stated that on September 5, 2018 they were at the rental unit and were denied access by a person named JA, after they provided written notice

The landlord's agent testified that they did not know who this person and contacted the RCMP. The agent stated that the RCMP contacted the tenant and the tenant informed them that they had given permission that JA could to reside in the property.

Filed in evidence to support a tenancy is a copy of the rental agreement. Notice of rent increases and invoices to support the utilities were in the name of the tenant.

Although the tenant was not residing in the rental unit and gave occupancy to their daughter and JA, I find the tenant TL is the tenant and is responsible for the action of any occupants they allow to reside in the property.

A move-in condition inspection was completed at the start of the tenancy. The tenant did not participate in the move-out inspection even after given a final opportunity to do so.

The landlord claims as follows:

a.	Unpaid rent	\$ 3,800.00
b.	Unpaid utilities	\$ 377.22
c.	Repair broken window	\$ 127.89
d.	Replacement of stove and refrigerator	\$ 1,424.99
e.	Repairs and painting	\$ 1,845.00
f.	Cleaning and supplies	\$ 1,924.18

g.	Garbage cleanup and removal	\$ 450.00
h.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$10,049.28</b>

#### Unpaid rent

The landlord's agent testified that the tenant failed to pay rent for June, July, August and September 2018, for a total of unpaid rent in the amount of \$3,944.00. The agent stated that there was a credit to the tenant and the current amount of unpaid rent is the amount of \$3,800.00. Filed in evidence is a rent ledger.

#### Unpaid utilities

The landlord's agent testified that the tenant had the utilities in their name; however, they got an invoice from their municipality for unpaid utilities that they had to pay. The landlord seeks to recover unpaid utilities in the amount of \$377.22. Filed in evidence is an invoice for the property showing the utilities are the name of the tenant and were unpaid.

#### Broken window

The landlord's agent testified that at the end of the tenancy one of the double glazed windows were broken on the inside. The agent stated that the interior glass had to be replaced. The landlord is seeking the cost to repair the window in the amount of \$127.89

#### Replacement of stove and refrigerator

The landlord's agent testified that the stove and refrigerator were approximately 21 1/2 years old when the tenancy commenced. The agent stated that at the end of the tenancy the appliances were damaged and had to be replaced. The landlord seeks to recover the cost of replacing the appliances in the amount of \$1,424.99.

The landlord's agent testified that this amount should be reduced by the useful life of appliances.

Filed in evidence are photographs. Filed in evidence is a receipt for the replacement.

#### Repairs and painting

The landlord's agent testified the drywall was damaged and they had to have portions of the drywall removed and then patched. The agent stated that they also had to have large scratches patched. The agent stated that the rental unit was painted at the start of

the tenancy. The landlord seeks to recover the cost of the repair and painting in the amount of \$1,845.00. Filed in evidence is a copy of the receipt.

#### Cleaning and supplies

The landlord's agent testified that the unit was left extremely dirty. The agent stated that there was garbage throughout the unit and that the wood floor was so dirty that they had to pay to rent a machine for cleaning. The agent stated that they hired two people to clean the rental unit. The landlord seeks to recover the cost of the cleaning and supplies in the total amount of \$1,924.18. Filed in evidence are photographs and receipts.

#### Garbage cleanup and removal

The landlord's agent testified that they had to pay to have the garbage removed and that there were approximately four truckloads. The landlord seeks to recover garbage removal and disposal in the total amount of \$450.00. Filed in evidence are photographs of the garbage left behind. Filed in evidence is an invoice for the removal and disposal.

#### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

#### Unpaid rent

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

#### **Rules about payment and non-payment of rent**

**26** (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

I accept the undisputed evidence of the landlord's agent that the tenant did not pay rent for June, July, August and September 2018. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$3,800.00**.

#### Unpaid utilities

I accept the undisputed evidence of the landlord's agent that the tenant did not pay the utilities. This is support by the letter from the municipality. I find the tenant has breached the tenancy agreement and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid utilities in the amount of **\$377.22**.

#### Damages

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

#### **Leaving the rental unit at the end of a tenancy**

**37** (2) *When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

#### Broken window

I accept the undisputed evidence of the landlord's agent that there was a broken window in the rental unit. This is not normal wear and tear. I find the tenant breached the Act, when they failed to repair the broken window and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost repair the window in the amount of **\$127.89**

#### Replacement of stove and refrigerator

I accept the undisputed evidence of the landlord's agent that the tenant caused damage to the stove and the refrigerator. This is not normal wear and tear. I find the tenant breached the Act, when they failed to repair the appliances and this caused losses to the landlord.

In this case, the evidence of the landlord's agent was that the appliances were 2 1/2 years old at the start of the tenancy in 2014.

The Residential Tenancy Policy Guideline 40 defines the useful life of building elements. If the tenant damaged an item, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement.

I have determined based on the guideline that the appliances had a useful life span of 15 years. The appliances were approximately 6 1/2 years old at the time of replacement. I find the landlord is entitled to recover the depreciated value of the appliances in the amount of **\$807.50**.

#### Repairs and painting

I accept the undisputed evidence of the landlord's agent that the tenant caused damage to the drywall which had to be repaired. This is not normal wear and tear. I find the tenant breached the Act, when they failed to repair the drywall at the end of the tenancy.

In this case, the rental unit required painting; however the useful life span of five years of the paint was close to expiring.

As the invoice does not separate the repairs and the painting, I find it cannot determine the actual cost of the painting to apply the depreciated value. I find it reasonable to reduce the amount claimed by 50% of the invoice. Therefore, I find the landlord is entitled to recover the cost of repairing the drywall and paint in the total amount of **\$922.50**.

#### Cleaning and supplies

I accept the undisputed evidence of the landlord's agent that the tenant left the rental unit extremely dirty. The photographs support that the rental unit was left extremely dirty. I find the tenant breached the Act, when they failed to leave the rental unit reasonable clean.

I find the landlord is entitled to recover labour cost, supplies, and the cost of renting a floor cleaner. Therefore, I find the landlord is entitled to recover the total costs in the amount of **\$1,924.18**. This amount is supported by receipts.

#### Garbage cleanup and removal

I accept the undisputed evidence of the landlord's agent that the tenant left a large amount of garbage in the rental unit. The photographs support that garbage was left throughout the premises. I find the tenant breached the Act, when they failed to remove their garbage. Therefore, I find the landlord is entitled to recover the cost of removal and disposal in the total amount of **\$450.00**.

I find that the landlord has established a total monetary claim of **\$8,509.29** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$462.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$7,946.79**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

#### Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: February 21, 2019

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Residential Tenancy Branch