



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MNDC MNSD FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held by teleconference on April 25, 2019. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit and for damage or loss under the Act;
- authorization to retain all or a portion of the Tenants' security deposit in satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent; and,
- to recover the cost of the filing fee.

Both parties attended the hearing and provided testimony. Both parties confirmed receipt of each other's documentary evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?

- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

### Background and Evidence

Both parties agree that monthly rent was \$1,400.00, and was due on the first of the month. The Landlord holds a security deposit in the amount of \$700.00. The Tenant moved out of the rental unit at the end of December 2018, and a move-out inspection was done on December 30 or 31.

The Landlord provided a monetary order worksheet speaking to the cost of repairs to the bathtub (the first 9 items) and then lost rent for the first half of January 2019. The Landlord provided receipts totalling over \$700.00 for the different materials he bought to replace the bathtub, but he is only seeking \$700.00 in total for the tub. The Landlord stated that the Tenants broke the tub, and put a hole in it. The Landlord stated that the tub was only 7 years old. The Tenants acknowledge breaking the tub, but feel that it could have been patched for a fraction of the cost. The Landlord stated that he sought professional advice on this matter, and the plumber informed him that a patch would not be possible, nor would it last. Subsequently, the Landlord bought the materials, and replaced the tub, redid the tub surround, and bought the parts himself. The Landlord stated he is not trying to recover the labour it took, just the cost of the materials, \$700.00.

The Landlord also stated that the Tenants gave their notice to end tenancy on December 4, 2018, and they informed him that they would be moving out by the end of December. The Landlord stated that he held numerous showings, open houses, and had significant interest, but only one person passed the financial and background checks. As such, the only renter they found that was suitable wanted to move in on January 15, 2019. The Landlord re-rented the unit for \$1,500.00, but he is looking to recover the lost rent from January 1-14, 2019. The Tenants acknowledge giving their notice late but feel the Landlord could have re-rented it sooner given the rental market.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

First, I turn to the Landlord's claim for expenses regarding the bathtub replacement. I note the Tenants acknowledge breaking the bathtub. This is not in question. However, I

turn to *Residential Policy Guideline #40 - Useful Life of Building Elements*, which states as follows:

This guideline is a general guide for determining the useful life of building elements for determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

I find the Tenants are responsible for the damage they caused to the bathtub. I note the Landlord stated he looked into patching and repair options, but the plumber opined that this was not a viable solution. I note the Landlord did not charge the Tenants for the hours he invested, replacing the tub, and is only seeking his material costs, for which he provided receipts. I acknowledge that replacing a tub often requires adjoining parts to be disturbed and replaced, and I find the materials claimed by the Landlord in this case are reasonable, given the significant damage to the tub. However, I note the tub was 7 years old when it was damaged, and the useful life expectancy of a bathtub is 20 years. This means the tub has around 65% of its useful life expectancy left, as per guideline #40. I have reduced the Landlords claim for these costs by 35%. The Landlord is entitled to recover \$455.00 for this item.

With respect to the Landlords claim for lost rent, I note the Tenants acknowledge giving their notice late. The Tenants breached their obligations under the Act in this regard. I also note the Tenants feel the Landlord could and should have been able to re-rent the unit sooner, but I also note the Landlord had several showings, open houses, and had interest in the unit. Despite this interest, he was unable to find a suitable tenant until January 15, 2019. I find the Landlord sufficiently mitigated his loss in this regard. Given

the Tenants inadequate notice, I find they are responsible for rent for the period of January 1-14, 2019, in the amount of \$700.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with their application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

<b>Item</b>	<b>Amount</b>
Bathtub replacement	\$455.00
Rent	\$700.00
PLUS: Filing Fee	\$100.00
Subtotal:	\$1,255.00
LESS: Security Deposit	\$700.00
<b>Total Amount</b>	<b>\$555.00</b>

### Conclusion

The Landlord is granted a monetary order in the amount of **\$555.00**, as specified above. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: April 26, 2019

---

Residential Tenancy Branch