



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code 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 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 attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

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

The landlord testified that the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on March 19, 2019, Canada post tracking numbers were provided as evidence of service. The tracking numbers are noted on the covering page of this decision.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenants have been duly served in accordance with the Act.

The landlord 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.

### Preliminary matters

In this case, the landlord’s application for monetary compensation does not matched the landlord’s monetary worksheet. I find it appropriate to amend the landlord’s monetary

claim to the amount claimed in their monetary worksheet as the tenants were served with a copy of the monetary worksheet.

At the outset of the hearing the landlord stated the tenants vacated the premises on April 26, 2019 and they no longer require an order of possession.

### Issues to be Decided

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 January 1, 2019. Rent in the amount of \$2,000.00 was payable on the first of each month. The tenants paid a security deposit of \$1,000.00. The tenancy ended on April 26, 2019.

A move-in condition inspection report was completed.

The landlord claims as follows:

|    |                        |                   |
|----|------------------------|-------------------|
| a. | House cleaning         | \$ 500.00         |
| b. | Garbage removal        | \$2,000.00        |
| c. | Repair damage to walls | \$ 500.00         |
| d. | Filing fee             | \$ 100.00         |
|    | <b>Total claimed</b>   | <b>\$3,100.00</b> |

The landlord testified that they had received an order of possession based on unpaid rent. The landlord stated that the tenants were removed by the bailiffs on April 26, 2019.

The landlord testified that the rental unit was not cleaned by the tenants and the entire rental unit needed to be cleaned including the appliances. The landlord stated that when they filed their application they had an estimated amount for cleaning of \$500.00; however, the actual cost of cleaning was \$650.00. Filed in evidence are photographs.

The landlord testified that the tenants left a large amount of garbage behind, inside and outside of the rental unit. The landlord stated that when they filed their application they had an estimated amount for garbage removal of \$2,000.00; however, the actual cost to remove the garbage was \$2,025.00. Filed in evidence are photographs.

The landlord testified that the tenants caused damage to walls, as there 7 large holes in the drywall. The landlord stated that when they filed their application they had an estimated amount for the repair of \$500.00; however, the actual cos was \$800.00. Filed in evidence are photographs.

### 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.

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.

I accept the landlord's undisputed testimony that the tenants did not clean the rental to a reasonable standard and that they left a large amount of garbage. I find the tenants' breached the action when they failed leave the rental unit reasonably clean as required by section 37 of the Act and this caused losses to the landlord.

In this case, the amount of the actual cleaning and garbage removal was greater than the amount claimed. The landlord's application was not amended to claim the greater amount of the cost of the cleaning and garbage removal. Therefore, I find the landlord is entitled to recover the estimated cost of cleaning and the removal of garbage in the amount of **\$2,500.00**.

I accept the landlord's undisputed testimony that the tenants caused damage to the rental unit as there were large holes in the drywall. I find the tenants' have breached the action when they failed to leave the rental unit undamaged as required by section 37 of the Act and this caused losses to the landlord.

In this case, the amount of the actual repair was greater than the amount claimed. The landlord's application was not amended to claim the greater amount of the cost of the repair. Therefore, I find the landlord is entitled to recover the estimated cost of the repair in the amount of **\$500.00**.

I find that the landlord has established a total monetary claim of **\$3,100.00** 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 **\$1,000.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$2,100.00**.

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

### 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: May 07, 2019

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Residential Tenancy Branch