



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **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 and for an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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.

At the outset of the hearing the landlord indicated that they are withdrawing their claim for the cost of the appliances.

During the heard the parties agreed that the tenants will have the concrete patio removed no later than September 30, 2019. The parties agreed the tenants will text message the landlord the name and number of the person that will be removing the concrete, at least one week prior to the removal. This is not to be any member of the tenants’ family. The tenants are to ensure all concrete is removed from the premises.

Should the tenants not comply with the settlement agreement the landlord is entitled to have the work completed after September 30, 2019, and reapply for damages. Therefore, I dismiss this portion of the landlord's claim with leave to reapply.

### 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 parties agreed that the tenancy began on February 13, 2019. Current rent in the amount of \$1,825.00 was payable on the first of each month. The tenants paid a security deposit of \$525.00.

The landlord claims as follows:

a.	Unpaid Rent for April 2019	\$1,825.00
b.	Removal of garbage exterior	\$1,275.00
c.	Removal of garbage & cleaning interior	\$ 650.00
d.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$3,850.00</b>

### Unpaid Rent for April 2019

The landlord's agent testified that they were at a previous hearing and they agreed to mutual end the tenancy on April 30, 2019. The agent stated that the tenant's did not pay rent for April, 2019. The landlord seeks to recover unpaid rent in the amount of \$1,825.00.

The tenants' testified that they were locked out of the rental unit on January 2, 2019. The tenants stated they called the Residential Tenancy Branch, who contacted the landlord. The tenants stated that the landlord telephoned them to pick up a key; however, they told the landlord that they would not be coming back because they felt harassed.

The landlord's agent argued the tenants' were not locked out. The agent stated that they were told that the tenants had left and the property was unsecured. The agent stated the property was only secured and the tenants were offered a new key, which was refused.

#### Removal of garbage exterior

The landlord's agent testified that the tenant did not remove any of the garbage from the exterior of the property. The agent stated that they had received a letter from the municipality that the property was in violation of the bylaws. The agent stated that they had 14 days to have the garbage removed or the municipality would do the cleaning and bill the landlord. Filed in evidence are photographs of the garbage left on the property. Filed in evidence is a letter from the municipality.

The tenants testified that they have lived on the property for a long period of time. The tenants stated that because they were locked out they were unable to remove the garbage from the exterior.

The landlord's agent argued that tenants were not locked out and they could have removed the garbage.

#### Removal of garbage & cleaning interior

The landlord's agent testified that the tenants did not remove their garbage for the interior of the premises and did not clean. The agent stated that they had to pay to have the rental unit cleaned. The landlord seeks to recover the amount of \$650.00. Filed in evidence are photographs of the rental unit.

The tenants testified that they were locked out of the rental unit and were unable to clean.

#### 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 for April 2019

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.*

...

In this case, the parties entered into a mutual agreement to end the tenancy on April 30, 2019. Rent in accordance with the tenancy agreement is due on the first day of the month. Rent was not paid.

I accept the evidence of the landlord that the property was unsecure and they changed the locks. I accept the evidence of both parties that the landlord offered the tenants a new key, which was refused by the tenants.

I do not accept the tenants' evidence that they were locked out of the rental unit that is not consistent with the evidence. The tenant refused a key to the premises.

Under the Act the tenants were required to pay rent in accordance with their tenancy agreement. The tenants did not pay rent. I find the tenants' breached section 26 of the Act, when they failed to pay rent when due. The landlord is entitled to be in the same position as if the tenants did not breach the Act, this includes unpaid rent. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$1,825.00**.

Cleaning

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.

Removal of garbage exterior

I do not accept the tenants were locked out of the premises that prevented them from removing the exterior garbage. The photographs support there was so much garbage on the property that prompted the municipality to place a cleanup order on the property, which is reasonable based on the photographs. I find the amount claimed by the landlord is reasonable based on the photographs and supported by a receipt. I find the tenants breached the Act, by failing to maintain the property in a reasonable state of cleanliness during their tenancy and by failing to remove the garbage. Therefore, I find the landlord is entitled to recover the cost of garbage removal in the amount of **\$1,275.00.**

Removal of garbage & cleaning interior

I do not accept the tenants were locked out of the premises that prevented them from removing the interior garbage or cleaning. The tenants were offered a key to the premises and refused.

I accept the rental unit was not left reasonably clean as this is supported by the photographs. I find the tenants' breached the Act, when they failed to clean the rental unit to a reasonable standard as required by the Act.

In this case, the landlord did not provide a copy of a receipt for me to review and considered. Therefore, I find an appropriate amount for compensation for cleaning the interior of the premises is the amount of **\$500.00**.

I find that the landlord has established a total monetary claim of **\$3,700.00** 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 **\$525.00 and 0.00 interest** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$3,175.00**.

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: July 26, 2019

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Residential Tenancy Branch