



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for authority to retain the tenants' security deposit and pet damage deposit, a monetary order for money owed or compensation for damage or loss and alleged damage to the rental unit, and for recovery of the filing fee paid for this application.

The landlord, the tenant, and her legal advocate attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and each party confirmed receiving the other's evidence in advance of the hearing.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and to recovery of their filing fee paid for this application?

### Background and Evidence

The evidence showed that this tenancy began on November 1, 2017, ended on or about October 29, 2018, and that monthly rent was \$1,700.00.

The matter of the tenant's security deposit was dealt with in another dispute resolution hearing on the tenant's application, in a Decision by another arbitrator on May 16, 2019.

The landlord's monetary claim was listed as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Yard clean-up	\$262.50
2. Yard clean-up	\$409.50
3. House cleaning	\$396.00
4. Damage to trim/window (estimate)	\$300.00
5. Filing fee	\$100.00
<b>TOTAL</b>	<b>\$1,468.00</b>

The landlord's relevant evidence included, but was not limited to, photographs of the yard and rental unit, invoices for yard service, the written tenancy agreement, and a letter from the landscaper.

The landlord confirmed there was no move-in or move-out condition inspection report.

The participants provided the following evidence in support of, and in response, to the landlord's application:

#### *Yard clean-up-*

The landlord submitted that the tenant failed to maintain the yard to the standards as before the tenancy began, which required her to hire a lawn service. The landlord submitted that she called the tenant during the tenancy and asked what was going on with the lawn.

The landlord submitted that when she moved back into the rental unit, the yard needed those repairs, as the expectation was that the tenant would at least weed the yard.

The landlord submitted that the tenancy agreement states that the yard was to look the same when the tenancy ended. In response to my inquiry, the landlord confirmed that the photographs she submitted do not show the whole front yard.

In response, the tenant's legal advocate pointed to the landlord's evidence to show that the yard was in reasonable shape at the end of the tenancy and referred to the landlord not having photographs of the front yard.

The tenant submitted that there was no walk-through either at the beginning or end of the tenancy. The tenant submitted that she informed the landlord she could do general landscaping, but not professional landscaping, as the landlord seemed to want.

The tenant submitted that there are two houses on the property and that she did not have exclusive use of the yards. She shared the yard with the landlord's son, according to the tenant.

The tenant submitted that she could not water the lawn due to water restrictions, that her nephew, prior to that, cut the grass and took away 12 bags.

The landlord submitted that she took away eight bags from the tree and that she weeded the lawn three weeks before moving; however, there was pouring rain for three weeks and the weeds came right back.

#### *Housecleaning-*

The landlord said that a friend of the tenant was supposed to clean the rental unit, but did not, as they had agreed. The landlord confirmed no photographs were taken.

In response, the tenant submitted that her friend had a family emergency on the day she was to clean. Later on, the tenant's friend contacted the landlord to arrange another time and the landlord refused to let her in, according to the tenant.

The tenant submitted her friend is a professional housecleaner and there was no reason to deny her access as no one was living in the rental unit for 15 days.

The tenant submitted that the floors were dirty and filthy when she moved in and she did not put one nail hole in the rental unit.

#### *Trim/window repair-*

The landlord submitted the tenant damaged this area during the tenancy and believed the tenant would have it repaired.

The landlord confirmed not having a photograph of the area of concern showing the condition at the start of the tenancy.

In response, the tenant submitted that the window and trim was old and cracked anyway.

### Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party, the landlord in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

Under sections 23(3) and 35(3) of the Act, a landlord must complete a condition inspection report in accordance with the regulations.

It is important to note that in this case, the landlord has not submitted a move-in or move-out condition inspection report, confirmed there was not one, nor was there proof that there was an inspection of the rental unit with the tenant at the beginning or end of the tenancy, as is the obligation of the landlord pursuant to sections 23 and 35 of the Act.

### *Yard clean-up-*

I have reviewed the photographs submitted by the landlord. One photo a close range of a tree with leaves that had changed colours and some coloured leaves on the ground. Some other photos showed a small amount of green growth in the gravel of the driveway. Another showed some dead leaves in the flower box.

I find the landlord's evidence does not show the tenant neglected the yard. The yard looked wet and the skies appeared to be gray. In late October, I find it reasonable that there were increased amount of rain and that weeds will grow at a fast rate in the rainy season.

Additionally, the written tenancy agreement shows that the tenant will water, fertilize, weed, etc., if the garden or grass area was for her exclusive use. In this case, the tenant submitted without dispute that she shared the property with the landlord's son, negating any requirement by the tenant under the written tenancy agreement. Even at that, I find the yard was in a reasonable condition for that time of the year, from a review of the photographs submitted by the landlord.

Given that the landlord did not supply photos of the yard prior to the tenancy depicting the same location of the after photos, I find the landlord has submitted insufficient evidence that the tenant did not maintain the yard.

I dismiss the landlord's claim for yard clean-up.

#### *Housecleaning and trim/window repair-*

As to the landlord's claim for the above alleged damages by the tenant, section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

In a case such as this where a landlord is claiming that the tenant damaged the rental unit beyond reasonable wear and tear, a key component in establishing a claim for such damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Act deal with the landlord and tenant obligations in conducting and completing the condition inspections.

In the circumstances before me, it is undisputed that the landlord has failed to meet her obligation under of the Act of completing the inspections and providing reports, which would show a record of and tend to prove the condition of the rental unit prior to the tenancy and after the tenancy ended. It is important that a tenant is provided an opportunity to note their version of the condition of the rental unit, and in this case, there was no such opportunity.

I also could not rely upon the landlord's photographs as proof, as there were no identical shots of the same item or location at the start and end of tenancy. In some

cases, the photographs were of such an extreme close-up of the item, it was not clear if this was alleged damage or reasonable wear and tear.

I also took into account that the landlord supplied no proof that she has incurred an expense for window/trim repair.

Due to the lack of a compliant condition inspection report taken at the beginning of the tenancy, or other evidence of the state of the rental unit, including dated and provable photographs, other unsupported evidence as noted above, and the disputed verbal evidence of the parties, I find the landlord submitted insufficient evidence to support her claim for repairs, damage to and cleaning for the rental unit and I therefore dismiss this portion of the landlord's application.

Due to the above, I dismiss the landlord's application in full, without leave to reapply, including her request to recover the filing fee.

### Conclusion

The landlord's application is dismissed.

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: August 9, 2019

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Residential Tenancy Branch