



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FFL

### Introduction

On May 15, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss; a monetary order for damage or repairs; and to keep the security deposit.

The matter was set for a conference call hearing. The Landlord attended the teleconference hearing; however, the Tenant did not. The Landlord testified that she sent the Notice of Dispute Resolution Proceeding documents to the Tenant using registered mail sent on May 19, 2019. The Landlord testified that she sent the registered mail to the Tenant at the address the Tenant provided at the end of the tenancy as his forwarding address. The Landlord provided a photograph of the envelope that is addressed to the Tenant. The Landlord provided a copy of a text message sent from the Tenant on April 7, 2019, providing the Landlord with his forwarding address. The Landlord testified that the Tenant refused to accept the registered mail and it was returned to her.

Based on the affirmed testimony of the Landlord and the documentary evidence before me, I find that the Notice of Dispute Resolution Proceeding was served to the Tenant in accordance with sections 89 and 90 of the Act. A person cannot intentionally avoid service. I find that the Tenant is deemed to be served with the Notice of Dispute Resolution Proceeding on May 24, 2019, five days after it was mailed.

At the start of the hearing the hearing process was explained. The Landlord was provided with an opportunity to ask questions about the hearing process and was provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

#### Issues to be Decided

- Is the Landlord entitled to money owed or other compensation for damage or loss?
- Is the Landlord entitled to compensation for damage to the rental unit?
- Can the Landlord keep the security deposit towards the claims?
- Is the Landlord entitled to recover the cost of the filing fee?

#### Background and Evidence

The Landlord testified that the tenancy began on September 1, 2018, as a one year fixed term tenancy to end on August 31, 2019. Rent in the amount of \$1,200.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$600.00.

The Landlord testified that the tenancy ended when the Tenant moved out of the rental unit on April 1, 2019.

The Landlord is seeking compensation as follows:

Loss of April 2019 Rent	\$1,200.00
Cleaning Costs	\$150.00
Blind Replacement	\$132.79
Repair Costs	\$250.00

#### Loss of April 2019 Rent

The Landlord testified that the Tenant moved out of the rental unit prior to the end of the fixed term tenancy agreement. The Landlord testified that the Tenant moved out on April 1, 2019, without paying the rent owing under the fixed term tenancy agreement for the month of April 2019. The Landlord testified that the rental unit was rented by a new Tenant as of May 1, 2019. The Landlord testified that she suffered a loss of rent for April 2019. The Landlord is seeking April 2019, rent in the amount of \$1,200.00.

#### Cleaning Costs

The Landlord testified that the rental unit was left unclean at the end of the tenancy. The Landlord testified that the kitchen and bathroom were left unclean. The Landlord testified that she hired someone to clean the rental unit. The Landlord provided photographs showing the condition of the rental unit at the end of the tenancy. The Landlord provided a receipt for the cost of cleaning in the amount of \$150.00. The Landlord is seeking to recover cleaning costs in the amount of \$150.00.

#### Blind Replacement

The Landlord testified that the Tenant's children are responsible for damaging five blinds in the rental unit. The Landlord provided one photograph showing damage to a small section of one blind. The Landlord did not provide a receipt for the cost to purchase five blinds. The Landlord is seeking the amount of \$132.79 from the Tenant.

#### Damage

The Landlord testified that the Tenant is responsible for damage to laminate flooring located in front of the oven. The Landlord provided a photograph of laminate flooring. The Landlord testified that the hole has not been repaired.

#### Weather Stripping on Garage Door

The Landlord testified that the Tenant is responsible for damage to weather-stripping on the garage door. The Landlord provided a photograph showing a small section of the doorway. The Landlord did not know how old the existing weather-stripping is and has not replaced the weather-stripping.

#### Installation Costs for Blinds

The Landlord is seeking \$50.00 for the labour cost of installing the five blinds that were replaced.

#### Dishwasher Replacement

The Landlord asked to include a claim for the replacement cost of a dishwasher. Since the Tenant did not amend her application to include a dishwasher, and since the claim for the dishwasher was not included in the Notice that was served to the Tenant, the Landlords request to include the dishwasher was denied.

### Security Deposit

The Landlord is seeking to keep the security deposit of \$600.00 in partial satisfaction of the claim for unpaid rent.

### Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline # 16 states the following with respect to types of damages that may be awarded to parties:

*An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.*

The Residential Tenancy Branch Policy Guideline #3 Claims for Rent and Damages for Loss of Rent deals with situations where a Landlord seeks to hold a Tenant liable for loss of rent after the end of a tenancy agreement. The Guideline provides:

*The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.*

*In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.*

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

### Loss of April Rent

I find that the Tenant ended the fixed term tenancy early by moving out of the rental unit on April 1, 2019. I find that the Tenant did not pay the rent owing under the tenancy agreement for April 2019. I find that the Landlord did not find a replacement Tenant for the rental unit until May 2019; and therefore the Tenant is responsible to pay the rent up to the earliest time that the tenant could legally have ended the tenancy. The Tenant is responsible to pay the rent until August 31, 2019, or until a new Tenant moved into the unit. I find that the Tenant owes the rent for April 2019.

I grant the Landlord the amount of \$1,200.00.

### Cleaning Costs

I accept the Landlord's evidence that the rental unit was left unclean. I find that the Tenant left the unit unclean and is responsible to repay the Landlord for the cost of cleaning the rental unit at the end of the tenancy.

I grant the Landlord the amount of \$150.00.

### Blind Replacement

I find that the Landlord only provided photographic evidence of damage to one blind and did not provide a receipt to prove the value of the loss being claimed. Since the Landlord failed to provide sufficient evidence that there is damage to five blinds and did not provide proof of the actual amount of her loss, the Landlords claim to be compensated for replacing five blinds is dismissed.

Since there is evidence of damage to one blind, but the value of loss cannot be determined, I award the Landlord a nominal amount of \$20.00 for the replacement cost and installation of one blind.

### Blind Installation

Since the Landlords claim for the replacement cost of the five blinds is dismissed, the Landlord's claim for the cost of installing five blinds is also dismissed.

### Floor Damage

I find that the Landlord has not repaired the laminate floor in the kitchen and has rented the unit out to a new Tenant. After the hearing a photograph of the kitchen floor provided by the Landlord was locate and reviewed and I find that there is a very small indentation approximately the size of a one dollar coin. I find that the Landlord has established that there is damage to the floor but has not established the value of her loss by having the floor repaired. Since the value of loss cannot be determined, and the damaged area is very small, I award the Landlord a nominal amount of \$20.00 for the damage to the floor.

### Weather Stripping

The Landlord did not know the age of the weather stripping on the garage door. The Landlord did not explain how the weather stripping was damaged or whether the stripping was damaged through normal wear and tear. The Landlord has not replaced the weather stripping. After reviewing the Landlords photograph I am unable to identify damage to the extent that would require replacement. I find that there is insufficient evidence from the Landlord that the weather-stripping on the door was damaged by intentional neglect on the part of the Tenant.

The Landlord claim for the replacement cost of weather stripping is dismissed.

### Filing Fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was partially successful with her claims, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a monetary claim of \$1,490.00 comprised of \$1,200.00 for April 2019, rent; cleaning costs of 150.00; \$40.00 for nominal damages; and the \$100.00 fee paid by the Landlord for this hearing.

I authorize the Landlord to keep the security deposit of \$600.00 that she is holding.

After applying the security deposit of \$600.00 towards the Landlords monetary award of \$1,490.00 I grant the Landlord a monetary order for the balance owing of \$890.00.

I grant the Landlord a monetary order in the amount of \$890.00. This monetary 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 Tenant e breached the fixed term tenancy agreement by moving out early. The Tenant is responsible under the tenancy agreement to pay the rent for the month of April 2019. The Landlord is awarded \$1,200.00.

The Tenant left the rental unit unclean at the end of the tenancy. The Landlord's claims for cleaning costs and for damage to the unit are partially successful.

I find that the Landlord has established a monetary claim of \$1,490.00. I order that the Landlord can keep the security deposit of \$600.00.

I grant the Landlord a monetary order against the Tenant for the balance owing of \$890.00.

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 21, 2019

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Residential Tenancy Branch