



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MND, MNSD, FFL

### Introduction

On June 27, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for unpaid rent; a monetary order for damage or repairs; and to keep the security deposit.

The matter was set for a conference call hearing. The Landlord and Tenant attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The Tenant testified that she has received the Landlords documentary evidence.

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.

### Preliminary and Procedural Matters

On October 8, 2019 the hearing was adjourned by consent of the parties in order to give the Tenant more time to provide documentary evidence.

The Interim decision provides:

*Both parties may submit additional documentary evidence as long as the parties exchange it in accordance with the Rules of Procedure. Any additional evidence must also be provided to the Residential Tenancy Branch prior to the hearing. Any evidence that is not exchanged in accordance with the Rules of Procedure may not be accepted and considered.*

The Tenant provided the Residential Tenancy Branch with 10 photographs and one document prior to the date of the reconvened hearing. At the start of the reconvened hearing, the Tenant testified that she did not serve a copy of her documentary evidence to the Landlord. The Landlord objected to the Tenant's evidence being accepted and considered.

I find that the Tenant's evidence was not exchanged in accordance with the rules of procedure. Since the Tenant's evidence was not served to the Landlord, it would be unfair to the Landlord for me to accept the evidence and consider it. The Tenant's documentary evidence is not accepted and will not be considered.

#### Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to a monetary order for damage or repair costs?
- Can the Landlord keep the security deposit towards their claims?
- Is the Landlord entitled to recover the cost of the filing fee?

#### Background and Evidence

The Landlord and Tenant testified that the tenancy began on August 1, 2018, as a one-year fixed term fixed tenancy to continue until July 31, 2019. Rent in the amount of \$2,500.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$1,250.00. The Landlord provided a copy of the tenancy agreement. The Landlord testified that he is still holding the security deposit in the amount of \$1,250.00.

The Landlord provided a monetary order worksheet and is seeking compensation as follows:

Sump Pump	\$1,203.80
Plumbing	\$347.67
Sump Pump Installation	\$75.04
Water Bill	\$416.69
Repair Material	\$457.23
Maintenance	\$300.00
Sump Pump Installation	\$21.90
Carpet Cleaning	\$130.00
Photos	\$13.50
Photocopies	\$3.48
April Rent	\$1,000.00

Sump Pump \$1,203.80

The Landlord testified that the pump was stuck due to the flushing of feminine hygiene products in the toilet and the pump had to be replaced. The Landlord testified that the pump was six years old. The Landlord provided a receipt dated March 26, 2019 for the replacement cost of a macerating pump.

In reply, the Tenant provided testimony agreeing that the Landlord had installed a new sump pump. The Tenant stated that she feels the pump was affected by normal wear and tear.

Plumbing      \$347.67

The Landlord is seeking to recover the cost of removing the old sump pump and the installation of the new sump pump. The Landlord provided a copy of an invoice dated March 26, 2019 from a plumbing company in the amount of \$347.67.

The Tenant did not provide any testimony in response to this claim.

Sump Pump Installation      \$75.04

The Landlord is seeking to recover his cost to rent a jackhammer to open the concrete floor to access the sump pump. The Landlord provided a copy of an invoice dated March 26, 2019 from an equipment rental company in the amount of \$75.04.

The Tenant did not provide any testimony in response to this claim.

Water Bill      \$416.69

The Landlord testified that the tenancy agreement requires the Tenants to pay for the water utility costs. The Landlord testified that the Tenants did not pay the water bill. The Landlord provided a copy of the water bill that the Landlord paid on May 28, 2019 for the amount of \$416.69.

In reply, the Tenant provided testimony agreeing that the tenants did not pay the water bill.

Damage and Repair Materials      \$457.23

The Landlord is seeking to recover his costs for the purchase of repair materials and for a handyman to paint the unit. The Landlord provided a hardware store receipt dated May 11, 2019 in the amount of \$457.23. When the Landlord was asked to provide an explanation on why he is seeking to recover these costs against the Tenant, the Landlord replied that he cannot recall the details.

In reply, the Tenant testified that she does not know why the Landlord would be making this claim.

Sump Pump \$21.90

The Landlord is seeking to recover an additional \$21.90 for the cost of installing the sump pump. The Landlord provided a store receipt dated May 28, 2019 in the amount of \$231.90. When the Landlord was asked to explain the claim, he replied that he cannot recall.

The Tenant did not provide any testimony in response to this claim.

Carpet Cleaning \$130.00

The Landlord testified that the Tenants left the bottom bedroom carpet dirty at the end of the tenancy. The Landlord testified that he had the carpet cleaned and has provided a receipt dated May 11, 2019 for the cost to clean the carpet.

In reply, the Tenant testified that she does not know about the downstairs. She testified that the carpet was vacuumed, and it did not look dirty. She testified that she does not know if it was cleaned.

Photos and Photocopies \$16.98

The Landlord is seeking to recover the cost for photographs and photocopies to prepare documentary evidence for the hearing.

April Rent \$1,000.00

The Landlord is seeking \$1,000.00 for unpaid April 2019 rent. The Landlord testified that he received a payment of \$500.00 from the Tenant and a payment of \$1,000.00 from another co-Tenant. The Landlord testified that the amount of \$1,000.00 remains unpaid.

In reply, the Tenant provided testimony that she is in agreement with the Landlord on this claim.

### Maintenance

Prior to ending the hearing, the Landlord was asked to confirm that we had addressed all of his claims and he replied yes. After the hearing, I note that the Landlord's monetary order worksheet contains a claim for maintenance. The Landlord did not pursue a claim for maintenance during the hearing and no testimony from either party was taken on this claim.

### Security Deposit

The Landlord applied to keep the security deposit of \$1,250.00 in partial satisfaction of his claims.

### 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.*

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

Sump Pump \$1,203.80

The person making a claim bears the burden of proof. The Landlord did not provide any photographs showing a sump pump or damage to a sump pump and did not provide any documentary evidence such as a report from a plumber to support that the sump pump was damaged due to flushing of feminine hygiene products. The Tenant testified that the sump pump failed due to normal wear and tear; and the Landlord testified that the sump pump was six years old.

I have considered that a Landlord is responsible to maintain appliances in a rental unit, and I have considered that a macerating sump pump being used in a rental unit with multiple occupants will experience wear and tear that affects its useful life. The Tenants only lived in the unit for nine months and the sump pump had five years of use prior to the Tenants moving into the unit.

I find that the Landlord provided insufficient evidence that the Tenants are responsible for the break down of the macerating sump pump. The Landlords claim for the replacement cost of a sump pump is dismissed.

Plumbing \$347.67

Since I have found that the Landlord did not prove that the Tenant was responsible for damaging the sump pump, the Landlord's claim for the cost of installing a new sump pump is dismissed.

Sump Pump Installation \$75.04

Since I have found that the Landlord did not prove that the Tenant was responsible for damaging the sump pump, the Landlord's claim for the cost of renting a jack hammer to remove the old sump pump is dismissed.

Water Bill \$416.69

The Tenant testified that they did not pay the water bill. The tenancy agreement provided by the Landlord supports the Landlords testimony that the Tenants are responsible for the cost of utilities including water. I find that the Tenant owes the Landlord for the utility bill of \$416.69.

I award the Landlord the amount of \$416.69.

Repair Material \$457.23

The Landlord could not recall the details on why the Landlord was seeking to recover the amount of \$457.23 from the Tenant. The Landlord bears the burden of proof, and I find that the Landlord provided insufficient evidence to support his claim.

The Landlords claim for \$457.23 is dismissed.

Maintenance \$300.00

The Landlord did not pursue this claim at the hearing. The Landlords claim for maintenance costs is dismissed.

Sump Pump Installation \$21.90

The Landlord could not recall the details on why the Landlord was seeking to recover the amount of \$21.90 from the Tenant. The Landlord bears the burden of proof, and I find that the Landlord provided insufficient evidence to support his claim.

The Landlords claim for \$21.90 is dismissed.

Carpet Cleaning \$130.00

Residential Tenancy Policy Guideline #1 provides the following information:

*Tenants are responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.*

The Tenant testified that the carpet was vacuumed but she does not know if the carpet was cleaned.

The Landlord testified that the bottom bedroom carpet needed to be cleaned. The Landlord did not provide any photographic evidence showing a dirty carpet or stains.

The Landlord's invoice for carpet cleaning does not indicate there were stains on the carpet.

I find that the duration of the tenancy was for less than one year. In this circumstance the Tenant is only responsible to clean the carpet if the Tenant has deliberately or carelessly stained the carpet. The Landlord provided insufficient evidence that the Tenant left the carpet stained.

The Landlord's claim to recover the cost for carpet cleaning is dismissed.

April 2019 Rent      \$1,000.00

The Landlord and Tenant were in agreement that the full amount of April rent owing under the tenancy agreement was not paid to the Landlord.

I award the Landlord the amount of \$1,000.00 for unpaid April 2019 rent.

Photos and Photocopies      \$13.50

The *Act* does not allow me to award costs for preparing documents and evidence for a hearing. The Landlord's claim for photo and photocopy costs is dismissed.

Security Deposit

I authorize the Landlord to keep the security deposit of \$1,250.00 in partial satisfaction of the Landlord's awards.

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 his 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 total monetary claim of \$1516.69 comprised of \$1000.00 in unpaid rent; \$416.69 for a utility bill; and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$1250.00 towards the claim of \$1,516.69 I find that the Landlord is entitled to a monetary order in the amount of \$266.69. 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 Landlord has established a monetary claim in the amount of \$1,516.69. I order that the Landlord can keep the security deposit in the amount of \$1,250.00 in partial satisfaction of the Landlord's claim.

I grant the Landlord a monetary order in the amount of \$266.69.

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: December 11, 2019

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Residential Tenancy Branch