



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNDC, FF

### Introduction

On August 16, 2019, the Landlords 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 a monetary order for money owed or compensation for damage or loss.

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 served the Tenant with the Notice of Dispute Resolution Proceeding documents in person on August 30, 2019. The Landlord provided a photograph of her serving the documents and a video recording of the service. I find that the Tenant was served with notice of the hearing in accordance with sections 89 and 90 of the Act.

At the start of the hearing I introduced myself. The hearing process was explained. The Landlord was provided with an opportunity to ask questions about the hearing process. The Landlord 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.

### Preliminary and Procedural Matters

The Landlord requested that the spelling of her surname on the application be corrected to the correct spelling. The Landlord’s application is amended accordingly.

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?
- Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began in July 2018, on a month to month basis. Rent in the amount of \$1,660.00 was to be paid to the Landlord by the fifteenth day of each month. The Tenant is the Landlord's brother in law. The Tenant was renting a townhouse unit.

The Landlord is seeking compensation as follows:

Unpaid Rent (January, February, March, April, May, June, July)	\$2,281.00
Loss of Rent for July / Illegal sublet	\$2,000.00
Carpet Replacement	\$1,230.00
Door frames	\$unknown
Ceiling fan	\$ unknown
Smoke detector	\$40.00
Strata charge	\$500.00
Steam cleaning charges	\$411.00

Unpaid Rent (January, February, March, April, May, June 2019)      \$2,281.00

The Landlord testified that the Tenant failed to pay all the rent that was owing under the tenancy agreement as follows:

<u>Month</u>	<u>Amount owing</u>
January 2019	\$600.00
February 2019	\$800.00
March 2019	\$500.00
April 2019	\$456.00
May 2019	\$300.00
June 2019	\$250.00
Total	\$2,906.00

The Landlord testified that the Tenant made the following payments in July 2019:

- July 2, 2019 in the amount of \$125.00
- July 13, 2019 in the amount of \$500.00

The Landlord is seeking a monetary order for unpaid rent in the amount of \$2,281.00.

Loss of Rent / Illegal Sublet      \$2,000.00

The Landlord testified that the Tenant moved out of the rental unit on July 31, 2019 and did not pay the rent owing under the tenancy agreement for July. The Landlord testified that the Tenant was also illegally subletting the rental unit and received \$340.00 of rental income.

The Landlord is seeking to recover the unpaid rent of \$1,660.00 for July 2019 and also requests to recover the \$340.00 rent that the Tenant received due to the illegal sublet.

#### Damage

The Landlord testified that the Landlord listed the rental property for sale in August 2019 and sold the rental unit in November 2019.

The Landlord testified that the Landlords did not replace the carpet and did not repair the door jam. The Landlord's claims are estimates based on amounts found on a building supply website.

#### Ceiling Fan

The Landlord testified that a ventilation fan was missing. The Landlord testified that they purchased and installed a new bathroom ventilation fan. The Landlord provide a photograph of a missing ventilation fan. The Landlord did not provide a receipt for the purchase of a fan.

Smoke Detector      \$40.00

The Landlord testified that they purchased and installed a new smoke detector. The Landlord provided a photograph of a damaged smoke detector. The Landlord testified that the smoke detector cost \$40.00.

Strata Charge      \$500.00

The Landlord testified that in June 2019 the Tenant removed a washing machine drain hose and reinstalled it incorrectly resulting in a flood that damaged a lower unit. The Landlord testified an insurance policy covered the repair costs; however, the Landlord had to pay a \$500.00 deductible. The Landlord paid the \$500.00 to the insurance company and is seeking to recover the amount from the Tenant. The Landlord provided a restoration invoice dated July 16, 2019 from the property strata indicating a charge in the amount of \$5,000.00.

Cleaning Charges \$411.00

The Landlord is seeking to recover costs for having the rental unit cleaned at the end of the tenancy. The Landlord testified that they paid \$200.00 to a person to steam clean the unit and haul away abandoned items and garbage. The Landlord testified that they paid a cleaning company \$211.00 to come and clean the unit. The Landlord provided photographs taken of the rental unit at the end of the tenancy.

The Landlord provided receipts for the cost of hiring the cleaners.

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:

Unpaid Rent (January, February, March, April, May, June)    \$2,281.00

Based on the testimony of the Landlord and on a balance of probabilities I find that the Tenant failed to pay the rent owing under the tenancy agreement.

I award the Landlord the amount of \$2,281.00 for unpaid rent for the above-mentioned months.

Loss of Rent July / Illegal Sublet    \$2,000.00

I find that the Tenant failed to pay the rent owing under the tenancy agreement for the month of July 2019.

I award the Landlord the amount of \$1,660.00 for unpaid July 2019 rent.

The Landlords claim for the additional \$340.00 is dismissed. The Landlord is not contractually entitled to receive or recover rent above the amount that was agreed upon under the tenancy agreement.

### Damage

The Landlords did not replace the carpet and did not repair the door jam. The Landlord sold the rental unit. The Landlords claim fails as the Landlord did not provide sufficient evidence to prove the actual value of their loss.

### Ceiling Ventilation Fan

The Landlord failed to provide a receipt for the purchase of a missing ceiling ventilation fan to prove the value of their loss. However, I accept the Landlords testimony and evidence that the fan was missing. I find that the Tenant is responsible for the replacement of a ventilation fan. In the circumstances, I grant a nominal award of \$25.00 for the cost of the fan.

### Smoke Detector

The Landlord failed to provide a receipt for the purchase of a missing smoke detector to prove the value of their loss. However, I accept the Landlords testimony and evidence that the smoke detector was missing. I find that the Tenant is responsible for the

replacement of a smoke detector. In the circumstances, I grant a nominal award of \$25.00 for the cost of a smoke detector.

Strata Charge        \$500.00

Based on the Landlords testimony and evidence, I find that the Tenant attempted a repair of the washing machine which resulted in water damage to surrounding areas. I find that the Tenant is responsible for the cost of repairing the damage.

I accept the Landlords evidence that the Landlord was charged a fee from the strata for the repair costs. I award the Landlord the amount claimed of an insurance deductible of \$500.00.

Cleaning Charges   \$411.00

I have considered the Landlords testimony and reviewed the Landlords photographic evidence. I find that the Tenant is responsible for the Landlords cost to clean the rental unit at the end of the tenancy and to haul away abandoned possessions and garbage.

I grant the Landlord the amount of \$411.00 for the cost of cleaning.

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 successful with their claims, I order the Tenant to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$5,002.00 comprised of \$3,941.00 in unpaid rent; \$50.00 for damage; \$500.00 for an insurance deductible; \$411.00 for cleaning costs; and \$100.00 for the filing fee.

I find that the Landlord is entitled to a monetary order in the amount of \$5,002.00. 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 failed to pay the rent owing under the tenancy agreement and is responsible for damage to the rental unit and cleaning costs.

The Landlord has established a monetary claim in the amount of \$5,002.00.

I grant the Landlord a monetary order in the amount of \$5,002.00.

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: December 24, 2019

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Residential Tenancy Branch