



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, FFL

### Introduction

On October 23, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for unpaid rent; and a monetary order for damage or repairs.

The matter was set for a conference call hearing. The Landlords and Tenants 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.

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 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 recover the cost of the filing fee?

### Background and Evidence

The Landlord and Tenant testified that the tenancy began on July 16, 2018, as a one-year fixed term tenancy. Rent in the amount of \$875.00 was to be paid to the Landlord by the first day of each month. The Landlord provided a copy of the tenancy agreement.

The parties testified that they entered into a mutual agreement to end the tenancy effective May 31, 2019.

The Tenant testified that he moved out of the rental unit on May 2, 2019.

The Landlord is seeking compensation for unpaid rent and damage as follows:

March 2018 Rent \$275.00

The Landlord testified that the Tenant did not pay all the rent owing under the tenancy agreement for the month of March 2018. The Landlord testified that he received an e-transfer payment in the amount of \$600.00; however, the remaining \$275.00 was never paid. The Landlord is seeking \$275.00 for unpaid March 2018 rent. The Landlord provided a copy of a rent payment ledger which shows the amounts of rent received and the dates that rent was received. The document indicates that \$600.00 was received for March 2018 rent.

In reply, the Tenant testified that he paid the Landlord \$825.00 towards March 2018 rent. The Tenant did not provide any documentary evidence such as banking records to support his testimony that he sent the Landlord \$825.00. The Tenant testified that he believes that the BC provincial government sent the Landlord a cheque in the amount of \$275.00 for March rent. The Tenant provided a request for crisis supplement – shelter document dated February 24, 2020 where the tenant requested \$275.00 for rent that he still owes. The Tenant submitted that the request was closed- because the service was provided. The Tenant submitted that “service provided” means that the request was approved, and the payment was sent to the Landlord.

The Landlord testified that he never received any payment of \$275.00 from the government. The Landlord testified that the Tenant always paid rent using e-transfer and that the Landlord never received rent payments directly from the government.

May 2019 Rent \$ \$875.00

The Landlord testified that a mutual agreement to end the tenancy was agreed upon for an effective end of tenancy date of May 31, 2019. The Landlord testified that the Tenant moved out of the unit on May 5, 2019 and never paid the rent owing under the tenancy agreement for May 2018. The Landlord is seeking \$875.00 for unpaid May 2019 rent.

In reply, the Tenant testified that he did not pay the Landlord the \$875.00 rent owing under the tenancy agreement for May 2019. The Tenant testified that the Landlord was attempting to show the rental unit to prospective Tenants without giving the proper notice of entry, so the Tenant decided to move out early without paying rent for May 2019.

Drywall Repair and Painting \$2,150.00

The Landlord testified that the basement requires drywall repair and a paint job. The Landlord testified that all the walls in the rental unit are scratched/ damaged. The Landlord provided three photographs showing scratches on walls. The Landlord testified that the rental unit was last painted in June 2018. The Landlord testified that the rental unit is approximately 850 square feet. The Landlord provided an estimate dated October 2019 in the amount of \$2,150.00 for the cost to repair damage from cat scratches and two coats of paint for the entire unit.

In reply, the Tenant provided testimony acknowledging that his cat damaged some walls in the rental unit. The Tenant testified that only two walls were damaged with scratches. The Tenant testified that the Livingroom wall and a wall by the kitchen were damaged. The Tenant testified that he was preparing to repair the walls, but he stopped when the Landlord informed him that he would not be returning the security deposit.

In reply, the Landlord provided testimony confirming that the two walls indicated by the Tenant were the worst damaged; however, other walls also had damage.

Carpet and Underlay Replacement \$835.76

The Landlord is seeking the amount of \$835.76 for the replacement cost for the underlay and carpet. The Landlord testified that there is a stain present on the bedroom carpet. The Landlord testified that he cleaned the carpet, but the stain was not removed. The Landlord testified that he has not replaced the carpet and a new Tenant has been living in the unit since June 2019. The Landlord testified that the carpet was present when he purchased the property in 2018.

The Landlord provided two photographs showing a soiled bedroom carpet. The Landlord provided an invoice dated July 24, 2019 in the amount of \$835.76 for the cost to purchase and install underlay and carpeting for 132 square feet. The Landlord testified that the replacement carpet is the same quality as the original carpet. The Landlord testified that he is not sure whether or not the underlay needs to be replaced.

In reply, the Tenant testified that there are water stains on the carpet caused by water ingress into the bedroom. The Tenant testified that he informed the Landlord that the Landlord needed to waterproof the bedroom wall to prevent water from leaking in. the Tenant testified that the stain could have been removed if the Landlord used a steam cleaner. The Tenant testified that the carpet is an old carpet.

#### Bathtub Damage \$256.20

The Landlord testified that the Tenant left the bathtub damaged. The Landlord testified that there are burn marks on the acrylic tub. The Landlord testified that it will cost \$256.20 to repair the tub. The Landlord provided two photographs of the bathtub showing the tub without damage and showing the tub with three or four burn marks.

The Landlord provided an invoice from a company dated October 2, 2019 in the amount of \$256.20 for the cost to repair several burn marks in the bathtub.

In reply, the Tenant provided testimony acknowledging responsibility for causing the damage to the bathtub. The Tenant testified that he is responsible to pay the cost to repair the tub.

#### 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.*

Residential Tenancy Policy Guideline #1 Landlord & Tenant - Responsibility for Residential Premises is intended to help the parties to an application understand issues that are likely to be relevant and may also help parties know what information or evidence is likely to assist them in supporting their position. The policy guideline provides that a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. A tenant is not responsible for reasonable wear and tear to the rental unit or site. The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

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

March 2019 Rent \$275.00

I find that the tenancy agreement required the Tenant to pay rent in the amount of \$875.00 each month. I accept the Landlord's testimony that the Tenant paid \$600.00 towards March 2019 rent. I find that the Tenant acknowledged that the amount of \$275.00 was owing for March 2019 rent and the Tenant applied for assistance to pay the amount owing. I find that the government document that states "service provided" is not conclusive evidence that the Landlord ever received a payment of \$275.00 from the provincial government. I find that there is insufficient evidence from the Tenant to prove that the provincial government paid \$275.00 to the Landlord for March 2019 rent.

I find that the Tenant owes the Landlord the amount of \$275.00 for March 2019 rent.

May 2019 Rent \$875.00

Section 26 of the Act provides that 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.

I find that the parties entered into a mutual agreement to end the tenancy effective May 31, 2019. I find that the Tenant is responsible to pay the rent until May 31, 2019 which is the earliest date that the tenancy could legally end. The Tenant did not have a legal right to withhold payment of rent for May 2019. I find that the Landlord did not find a

new tenant until June 2019 and suffered a loss of rent for May 2019. I find that the Tenant owes the Landlord the amount of \$875.00 for May 2019 rent.

Drywall Repair and Painting \$2,150.00

The Landlord is seeking compensation for the cost to repair walls and paint the entire unit; however, the Landlord has provided insufficient evidence to support that the walls of the entire rental unit are damaged and require painting. The Landlord provided three photographs showing damage to parts of three walls. The Tenant acknowledged responsibility for some damage to two walls.

The Landlord has failed to prove that all the damage being claimed exists and has not performed the repairs, I find that the Landlord has failed to prove the actual amount required to compensate him for the claimed loss.

Since the Tenant acknowledges causing some damage; however, the value of loss is not proven, it is reasonable to award the Landlord a nominal monetary award.

I award the Landlord \$200.00 for the cost to repair and paint the scratches on the walls.

Carpet and Underlay Replacement \$835.76

The Landlord testified that the carpet was there when he purchased the property in 2018. The Landlord does not know the age of the carpet and the Landlord has not replaced the carpet.

I have reviewed the two photographs provided by the Landlord. I find that the photographs show that the carpet is dirty; however, they do not show any visible damage. The Landlord testified that he has cleaned the carpet and a new tenant has been living in the unit for the past 10 months. The Landlord did not provide a photograph(s) showing the condition of the carpet after it was cleaned.

The Landlord has failed to prove damage or loss exists to the extent that requires replacement of the carpet. The Landlord's claim for the replacement cost of the carpet is dismissed.

Bathtub Damage \$256.20

The Tenant accepted responsibility for the damage to the bathtub.

I grant the Landlord compensation in the amount of \$256.20 for the cost to repair the bathtub.

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 some of the 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 \$1,706.20 comprised of \$1,150.00 in unpaid rent; \$456.20 for damage; and the \$100.00 fee paid by the Landlord for this hearing.

I grant the Landlord a monetary order in the amount of \$1,706.20. 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

I find that the Landlord has established a total monetary claim of \$1,706.20 comprised of \$1,150.00 in unpaid rent; \$456.20 for damage; and the \$100.00 fee paid by the Landlord for this hearing.

I grant the Landlord a monetary order in the amount of \$1,706.20.

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: March 18, 2020

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Residential Tenancy Branch