



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Code MNR, MND, MNSD, FF

### Introduction

This hearing was convened in response to applications by the landlords and the tenant, filed under the Residential Tenancy Act, “the “Act”).

The landlords’ application is seeking orders as follows:

1. For a monetary order for money owed or loss under the Act;
2. For a monetary order for damages to the rental unit;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant’s application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Are the landlords entitled to a monetary order for money owed and loss under the Act?  
Are the landlords entitled to monetary compensation for damages?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties agreed that the tenancy began on February 15, 2019. Rent in the amount of \$2,100.00 for February, March and April was payable on the first of each month. Rent for subsequent months was \$2,300.00. The tenant paid a security deposit of \$1,050.00 and a pet damage deposit of \$250.00. The tenancy ended on October 22, 2019.

The parties agreed a move-in condition inspection report was completed.

The landlords claims as follows:

a.	Bailiff fees & supreme court fee	\$ 6,846.08
b.	Cleaning fees	\$ 280.00
c.	Repair and painting	\$ 1,260.00
d.	Loss wages, small claims fee and paper work	\$ 1,222.75
e.	3 months of loss rent	\$ 7,050.00
f.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$16,758.81</b>

### Bailiff fees & supreme court fee

The landlord testified that they received an order of possession, dated September 2, 2019. The landlord stated that the tenant did not comply with the order and they had to file the order of possession in the Supreme Court. The landlord stated that the Bailiffs had to physically remove the tenant on October 22, 2019. The landlord seeks to recover the cost of the Supreme Court fee of \$120.00, and the Bailiff fees of \$6,726.08. Filed in evidence are copies of the order of possession and Bailiff receipts.

The tenant testified that the Bailiffs did enforce the order.

### Cleaning fees

The landlord testified that the tenant did not clean any of the rental unit. The landlord stated that the rental unit consists of 3 bedrooms and 3 bathrooms. The landlord seeks to recover the cost of cleaning in the amount of \$280.00. Filed in evidence is a copy of the receipt.

The tenant testified that the Bailiff's gave them 20 minutes to get some personal items together and they did not have time to clean.

The advocate for the tenant stated that they do not have a copy of the receipt and the claim should fail.

The landlord argued the tenant was provided a copy of the receipt with the evidence.

#### Repair and painting

The landlord testified that window blinds were provided under the terms of the tenancy agreement; however, the tenant hung drapery on 18 of the windows without their consent. The landlord stated that they had to remove the curtain rods, and other decorative hangers and have the holes repaired and then paint the damage.

The landlord testified that they actually paid the amount of \$7,350.00 to paint the rental unit; however, the estimate for the damage caused by the tenant was the amount of \$1,260.00. The landlord seeks to recover the cost of damage in the amount of \$1,260.00. Filed in evidence is a copy of the estimate and a receipt for the actual cost.

The tenant testified that they did hang window coverings over all the blinds that were provided. The tenant stated that they did not have time to remove rods or brackets because they were evicted by the Bailiffs.

The advocate for the tenant argued that they do not have a copy of the estimate. The tenant confirmed they had a copy in their evidence package. The advocate argued that the Residential Policy Guideline #40 (the "PG#40") should apply, which sets out the useful lifespan of a building element.

#### Small claims fee and paper work

The landlord submits that they filed an application in small claims court and seek to recover the cost of filing in the amount of \$156.00.

The landlord submits that they had to pay for paper work and seek to recover the cost of \$6.75

### 3 months of loss rent

The landlord testified that the tenant did not vacate the rental unit in accordance with the order of possession. The landlord stated that they were unable to attempt to rent the premise as they had no idea when the tenant was going to leave.

The landlord testified that the tenant was finally removed on October 22, 2019, which did not give them sufficient time, to clean, make the repairs and find a new renter for November 2019.

The landlord testified that they were unable to find a new renter for December 2019 or January 2020, due to the time of the year and had the tenant vacated the premise in September 2019, when the notice to end tenancy was given, they would have had a chance to find a new tenant for these months.

The tenant testified that it was the landlords that ended the tenancy when they issued the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

### Tenant's application

The tenant testified that they gave the landlords their forwarding address on November 1, 2019, by email and then again by registered mail sent on November 23, 2019. The tenant stated that the landlords did not return their deposits and did not make an application within 15 days.

The landlord testified that they gave the tenant five opportunity to complete the move-out condition inspection, which is more than the two opportunities required under the Act. The landlord stated that they never heard from the tenant, until November 1, 2019, by email which simply stated that all dates provided did not work for them due to work.

The tenant testified that they did not participate in the move-out condition inspection report because they were told by the Bailiffs that if they returned to the rental property that they would be charged with trespassing.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

#### Landlord's application

#### Bailiff fees & supreme court fee

The tenant failed to comply with the order of possession. The order was enforced by the Bailiffs due to the actions of the tenant failing to give vacant possession to the landlords. I find the tenant breached the Act, and the landlords suffered a loss. I find the landlords are entitled to recover all fees associated with enforcing the order. Therefore, I find the landlord is entitled to recover the costs in the total amount of **\$6,846.08.**

#### Cleaning fees

I accept the evidence of the landlord that the tenant did not clean the rental unit at the end of the tenancy. This is supported by the tenant's evidence. While I accept the tenant was only given 20 minutes by the Bailiffs to remove personal items and did not have time to clean; however, that was due to their own actions of not complying with the order of possession.

In this case, the advocate stated they do not have a copy of the receipt and that this issue should fail. However, I find it more likely than not, that they were not provided a copy from their own client. As the tenant admitted they have other evidence, which was not provided, such as the estimate for repair.

A copy of the receipt was provided as evidence for my review. Further, even if a receipt was not provided, I find Section 67 of the Act, gives me the authority to

determine an appropriate amount, I find the amount claimed by the landlord reasonable as this was a 3 bedroom 3 bathroom home. Therefore, I find the landlords are entitled to recover cleaning costs in the amount of **\$280.00**.

#### Repair and painting

I accept the evidence of both parties that the tenant did not remove the curtain rods and other decorative holders at the end of the tenancy. While I accept this was likely due to the Bailiffs only giving the tenant 20 minutes to recover personal items, this was as a result of the tenant's action of failing to give vacant possession to the landlords. I find the tenant breached Section 37 of the Act, when they failed to remove the curtain rods and other decorative holders that were attached to the walls and repair any damage to the walls.

In this case, the landlords had the entire rental unit painted which the cost was \$7,350.00. The landlord was not seeking the cost of the repainting and therefore, I do not need to consider the PG#40.

The landlord was claiming the cost of the repair to the walls and painting that repair. I do not find this unreasonable as the tenant was required to remove these items and leave the rental unit undamaged at the end of the tenancy. Therefore, I find the landlords are entitled to recover the estimated cost of repairing the walls as shown in the estimate in the amount of **\$1,260.00**.

#### Loss of wages, Small claims fee and paper work

I find the landlords are not entitled to recover loss of wages, for when the Bailiffs attended the premise on October 22, 2019 or to attend the hearing. The landlords are in the business of renting and may be required to take time off from their work to deal with issues of their business. Therefore, I dismiss this portion of the landlords' claim.

I find the landlords are not entitled to recover small claim fees and paper work fees. The landlords filed an application for monetary compensation in small claims court, who do not have jurisdiction to consider issues that are tenancy related. The director has exclusive jurisdiction of all matters under Section 84 of the Act. Only the monetary order may be enforced through the Small Claims Act and any cost relating to the enforcement are recoverable through that jurisdiction. Therefore, I dismiss this portion of the landlords' claim.

3 months of loss rent

I do not accept the evidence of the tenant that the tenancy ended because of the actions of the landlord. The tenant received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and an order of possession was granted. The tenant was ordered to give vacant possession to the landlord. However, the tenant failed to comply with the order and was removed from the premise by the Bailiffs on October 22, 2019.

I find that due to the actions of the tenant, that the landlords could not attempt to find a new renter as long as the tenant was overholding the premise. I accept the evidence of the landlord that due to short notice that they could not find a new tenant for November 2019.

Since the tenant failed to comply with the Act, I find the landlords are entitled to an amount sufficient to put the landlords in the same position as if the tenant had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy, which in this case would be November 30, 2019. Therefore, I find the landlords are entitled to recover loss of rent for November 2019, in the amount of **\$2,300.00**.

In this case the landlord is seeking to recover loss of rent for December 2019, and January 2020. While I accept that these months are difficult to rent; however, that is not the fault of the tenant as the tenant could have ended their tenancy legally on November 30, 2019, if they had not breached the Act. This was not a fixed term agreement. Therefore, I dismiss this portion of the landlords' claim for December 2019, and January 2020, rent.

I find that the landlord has established a total monetary claim of **\$10,786.08** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$1,050.00** and pet damage deposit of **\$250.00** in partial satisfaction of the claim and I grant the landlords an order under Section 67 of the Act for the balance due of **\$9,486.08**.

This 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.

### Tenant's application

In this case the tenant did not attend the move-out condition inspection. The tenant was given 5 different dates to attend. While I accept the Bailiffs likely told the tenant that if they returned to the rental unit that they could be charged with trespassing. However, that is only if the tenant attended uninvited. Further, simply because the tenant was working that does not release them from their obligation under the Act. A tenant is required to attend the move-out condition inspection regardless of their circumstances, or alternatively they could appoint someone to attend of their behalf. The evidence supports that the tenant had no intention of meeting their obligations under the Act. I find the tenant has breached Section 35 of the Act.

Section 36(1) of the Act, states, the right of a tenant to the return of a security deposit or a pet damage deposit, is extinguished if the landlord has given the tenant 2 opportunities for the inspection.

As I have found the tenant rights to the return of the security deposit and pet damage deposit has been extinguished, I find section 38(2) of the Act, applies, which means the landlords were not obligated to file their application within 15 days. Therefore, I dismiss the tenant's application. As the tenant was not successful with their application, I decline to award the tenant the cost of the filing fee.

### Conclusion

The landlord is granted a monetary order and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

The tenant'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: May 04, 2020

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Residential Tenancy Branch