



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC-S, MND-S, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent;
- compensation for a monetary loss or other money owed;
- compensation for alleged damage to the rental unit by the tenant;
- authority to apply the tenants' security deposit to any monetary award; and
- recovery of the filing fee.

The landlord and tenant PB attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The tenant confirmed receiving the landlord's Application for Dispute Resolution, evidence, and Notice of Hearing (application package) and her amended application.

The tenant confirmed not providing documentary or digital evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions are reproduced here; further, only the evidence specifically relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The listed tenant, SB, was not served with the landlord's application package and tenant PB said she was not responsible for any landlord claims. I have therefore excluded her name from any further consideration.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and recovery of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a month-to-month tenancy start date of May 1, 2020, monthly rent of \$2,500, due on the 1<sup>st</sup> day of the month, and a security deposit of \$1,250 and a pet damage deposit of \$1,250 being paid by the tenant to the landlord.

The tenancy ended on or about August 31, 2020.

The landlord confirmed retaining the tenant's security deposit and pet damage deposit, having made this claim against it.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid rent, August 2020	\$2,500.00
2. Late fees, \$50 per day	\$250.00
3. Cleaning, serving papers	\$250.00
4. Rental service agency fees	\$1,622.25
5. Cleaners fee	\$294.00
6. Estimated cleaning fee	\$448.56
7. Visitors pass	\$20.00
8. Plumbing repairs	\$212.00
9. Ceiling light replacements	\$34.59
10. Application filing fee	\$100.00
<b>TOTAL</b>	<b>\$5,731.40</b>

Prior to any response from the tenant, I inquired of the tenant if there were any claims to which he agreed.

The tenant agreed he owed the monthly rent for August and to the cleaning fees, the visitors pass, the plumbing repair costs, and ceiling lights.

The tenant was unsure of the rental agency fees.

The hearing proceeded on the remaining claims.

*Late fees –*

The landlord submitted that the tenant failed to pay the rent for August, and that the addendum in the written tenancy agreement provides for a \$50.00 service fee for late rent. The landlord claimed that the requirement for \$50.00 was a daily fee and that she stopped charging for it after several days.

*Cleaning, serving papers –*

The landlord submitted that she lives an hour away from the rental unit, which caused her time spent in driving to the area to serve papers and to provide extra cleaning. The landlord submitted that she spent an hour cleaning the closet and two hours doing laundry and that her time was worth \$30 per hour.

*Rental service agency fees –*

The landlord submitted that there was an abrupt end to the tenancy and that she hired a leasing agency to quickly find another tenant.

*Cleaners fee –*

The landlord said that the rental unit comes furnished and due to that, the unit needs a deep clean after each tenancy. The landlord said that the addendum provides that the tenant will pay for a professional cleaning at the end of the tenancy.

The landlord said she has the rental unit professionally cleaned at the end of each tenancy.

*Estimated cleaning fee –*

The landlord said that this fee is an estimate for steam cleaning the couch and mattress cover, as the tenant had pets during the tenancy. The landlord confirmed that the couch and mattress cover have not been steam cleaned as yet, as she wanted the costs from this tenant.

Filed into evidence by the landlord were cleaning receipts, with one being prior to the tenancy, and a condition inspection report (CIR), which was unsigned, except for the portion of the CIR for repairs to be made at the beginning of the tenancy.

Analysis

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the tenant has not contested the landlord's claim for **unpaid rent** of **\$2,500** for August 2020, **replacement of the visitors pass** for **\$20**, **plumbing repair** for **\$212**, and **ceiling lights** for **\$34.59**.

I therefore **grant** the landlord a monetary award in the amount of **\$2,766.59**.

As to the remaining individual claims, I find the following:

***Late fees, \$50 per day –***

As to the landlord's claim for \$250 for a daily late payment of rent fees, section 7(1)(d) of the Residential Tenancy Regulation allows a landlord to charge an administration fee up to \$25 for a late payment of rent.

In this case, to come into compliance with the Regulation, I find the landlord is entitled to one (1) fee for a late payment of rent for August 2020, in the amount of \$25. The landlord is **granted** a monetary award of \$25.

***Cleaning, serving papers –***

The landlord has combined claims in this portion of her application, for both time spent in traveling to the rental unit to serve documents and three hours of cleaning, at \$30 per hour.

As to the landlord's request for her time in traveling to the rental unit to serve documents, I find that the landlord has chosen to incur costs that cannot be assumed by the tenant. I do not find the tenant to be responsible for the landlord not living close to the rental unit. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred to conduct a landlord's business, such as traveling to the rental unit.

Therefore, I find that the landlord may not claim for time costs, as they are costs which are not named by the Act and this portion of her claim is **dismissed**.

As to the landlord's claim for cleaning the closet for an hour, I reviewed the photographic evidence and find that one picture shows the tenant left some clothes hangers, wire baskets and iron, and a small box in the closet. I find it reasonable that the landlord would have to remove these items. I, however, do not find that their

removal would take more than a few minutes. I find it reasonable to **grant** the landlord a nominal fee of **\$10**.

As to the laundry costs, I find the landlord submitted insufficient evidence to support that washing items in a furnished rental unit would be the responsibility of the tenant. I therefore **dismiss** her claim for two hours spent in laundering.

***Rental service agency fees –***

The landlord has claimed the cost of hiring a property management company. However, an applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act. The cost of property management is a choice made by the landlord; as a landlord is not barred from seeking new tenants herself. There was no evidence before me that the landlord was unable to seek new tenants; just as she had with the tenants who vacated the unit.

As a result, this portion of the claim is **dismissed**.

***Cleaners fee –***

Under section 37(2) of the Act, at the end of a tenancy, when the tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

The tenant is not responsible for cleaning of the rental unit to bring the premises to a higher standard, in this case, where the landlord expected the tenants to leave the rental unit in exactly the same condition as he received it.

The landlord said she has the suite professionally cleaned after each tenancy and hands the receipt to tenants.

I find the landlord's claim here is based upon the terms of the addendum to the written tenancy agreement. Term 17 states that the suite will be professionally cleaned at the end of the tenancy and the tenant will pay the costs. Term 15 requires the tenant to leave the rental unit in the same order as it was at the beginning of the tenancy.

I find these terms violate section 37(2) of the Act.

Section 5 of the Act states that landlords and tenants may not avoid or contract out of the Act or Residential Tenancy Regulations and any attempt to avoid or contract out of this Act or the regulations is of no force.

Additionally, sections 23(4) and (5) and 35(3) and (4) of the Act, a landlord must complete a condition inspection report in accordance with the Residential Tenancy Regulations and both parties must sign the report.

This was not the case here, and I additionally could not determine if the rental unit was left less than reasonably clean.

For these reasons, I **dismiss** the landlord's claim for \$294.

I note that while the tenant did not specifically disagree to this cost, I have not granted the landlord any monetary award due to the term violating the Act.

***Estimated cleaning fee –***

The landlord said that she will steam clean the mattress and couch when she is awarded the funds because the tenant had pets.

I find this is not sufficient evidence that the tenant violated the Act, which in turn, caused the landlord to incur a loss. Additionally, the landlord confirmed that she has not had the mattress and couch steam cleaned, even though new tenants have moved into the rental unit.

I therefore **dismiss** the landlord's claim for estimated cleaning costs of \$448.56.

As the landlord was partially successful in his application, she may recover the \$100 filing fee from the tenant. Using the offsetting provisions contained in section 72 of the Act, the landlord may withhold the tenant's security deposit and pet damage deposit in partial satisfaction of the monetary award.

Conclusion

I issue a monetary order of \$401.59 in favour of the landlord as follows:

ITEM	AMOUNT
1. Unpaid rent, August 2020	\$2,500.00
2. Visitors pass	\$20.00

3. Plumbing repair	\$212.00
4. Ceiling lights	\$34.59
5. Late payment of rent fee	\$25.00
6. Nominal fee for cleaning the closet	\$10.00
7. Return of filing fee	\$100.00
8. <i>Less security deposit</i>	<i>(\$1,250.00)</i>
9. <i>Less pet damage deposit</i>	<i>(\$1,250.00)</i>
<b>TOTAL</b>	<b>\$401.59</b>

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 16, 2020

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Residential Tenancy Branch