



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNSD, FF

### Introduction

This matter proceeded by way of an ex parte Direct Request Proceeding, pursuant to section 55(4) of the Residential Tenancy Act (the Act) and dealt with an Application for Dispute Resolution by the landlords for an Order of Possession based on unpaid rent and a Monetary Order.

On November 30, 2020, the Adjudicator determined that this matter be adjourned to a participatory hearing, scheduled on today's date, February 16, 2020. The interim decision should be read in conjunction with this decision.

The landlord testified that they complied with the service provision in the interim decision, and the Notice of Hearing and interim decision was posted to the door of the rental unit on December 5, 2020. Filed in evidence is a photograph showing two packages posted to the door and a witness statement. I find the tenants were served with the Notice of Hearing for today's date, February 16, 2021, and the interim decision.

On January 17, 2021, the landlords amended their application for dispute resolution adding further loss of rent, and damages. The landlord testified that they first attempted to serve their amended application and evidence by personal service; however, the tenants would not answer the door, as a result they were sent to the tenants forwarding by registered mail on January 25, 2021.

Canada post tracking numbers were submitted as evidence. The Canada post tracking history shows that Canada post left a notice card for each of the tenants on January 26, 2021, as of today's February 16, 2021, those packages remain unclaimed. I find the tenants were deemed served on January 31, 2021, with the amendment and evidence. Refusal or neglect to pickup the packages does not override the deemed services provision of the Act.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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 unpaid rent?

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 entered into a fixed term tenancy which began on March 15, 2020 and was to expire on March 14, 2021. Rent in the amount of \$1,950.00 was payable on the 15th of each month. The tenants paid a security deposit of \$975.00. The tenancy ended on December 24, 2020.

A move-in condition inspection report was completed, which shows the rental unit was brand new when the tenancy commenced.

The landlords claim as follows:

a.	Unpaid rent	\$4,906.00
b.	Damages to the rental unit	\$7,677.00
c.	Loss of revenue (December 24, 2020 to January 14, 2021 and January 15, to February 14, 2021)	\$3,025.00
d.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$15,708.00</b>

### Unpaid rent

The landlord testified that the tenants failed to pay rent on October 15<sup>th</sup>, November 15, and December 15, 2020. The landlord stated that they split the December 2020, rent into prorated rent for while the tenants were living there and loss of revenue for the

remainder of the rental period. The landlord seeks to recover loss of rent and revenue in the total amount of \$5,850.00.

Damages to the rental unit

The landlord testified that the tenants left garbage behind in the garage and rental unit. The landlord stated they had to pay to have it dispose. The landlord seeks to recover the cost of garbage disposal in the amount of \$200.00. Filed in evidence are photographs that show garbage was left behind and a proof of payment.

The landlord testified that the tenants did not clean the rental unit and it had to be cleaned. The landlord stated this included cleaning walls, bathrooms, kitchen cupboards floors and the carpet as it was extremely dirty. The landlord seeks to recover the cost of cleaning in the amount of \$492.50. Filed in evidence are photographs of the rental unit, which support the testimony of the landlord. Filed in evidence is a receipt.

The landlord testified that there was multiple damage in the rental unit. The landlord stated they had a company attend to provide an estimate for the cost for the repairs which is outlined as items 1 to 9 in the job estimate filed in evidence. The landlord stated that they have had some of the work complete, but they are still making the repairs. The landlord stated that item 5 in the job estimate (\$157.94) for the kitchen cupboard slides should be removed as they purchased the kitchen cabinet drawer slides on their own which they will address later in this decision. Filed in evidence is a copy of the job estimate in the total amount of \$4,407.10.

The landlord testified that item 1 is for the garage door that was damage as the tension wire on the door was broken and the rail was bent and had to be repaired. The landlord stated that door also had multiple scratches which needed painting. Filed in evidence are photographs of the garage door.

The landlord testified that item 2 is for the laundry – garage door as the door and door frame were broken and had to be replaced. Filed in evidence are photographs of the door, which show the door and frame were broken.

The landlord testified that item 3 is for the main entrance door. The landlord stated that the wood on the interior side of the door was pushed in and broken and the tenant had damaged the door by using wood to barricade the door. Filed in evidence are

photographs showing the door damage and the wood that was used to barricade the door.

The landlord testified that item 4 is for damage caused to the walls. The landlord stated that there were multiple scratches and dent/holes in the drywall. The landlord stated there was a large dent/hole in the drywall by the stairs and there were multiple spots of something being pulled off the wall causing the drywall paper to be ripped. Filed in evidence are photographs which support there is one large hole in the drywall and something that was removed from the walls causing the drywall paper to be ripped.

The landlord testified that item 6 is for the damage caused to kitchen laminate flooring. The landlord stated that the flooring was damaged by water as it was lifting and warped. The landlord stated that the floor was required to be replaced. Filed in evidence are photographs of the floor.

The landlord testified that item 7 is for the replacement of faucets as the tenants had removed the new shower head and replace with an old one and that part of the handheld shower attachment was missing. The landlord stated these had to be replaced. Filed in evidence are photographs.

The landlord testified that item 8 is to have a clogged removed in the main bedroom bathroom toilet as there was some type of foreign object in the pipe, which they think may have been some type of clothing.

The landlord testified that item 9 is for the replacement of the 2<sup>nd</sup> floor bathroom sink. The landlord stated that there was a small hole that went right through the sink. The landlord stated they have no idea how the hole was made. Filed in evidence are photographs of the sink, which shows there is a hole that goes through the sink.

The landlord seeks to recover the cost of the above repairs (\$4,407.10 - \$157.94) in the total amount of \$4,249.16.

The landlord testified in addition to the job estimate they had to replace and purchase the following items totaling the amount of \$871.95.

The landlord testified that they had to replace the locks as no keys were returned and the locks were damaged. The landlord stated that the tenants changed the door lock on the front door and no key was returned. The back door lock was broken as the key was broken off in the lock and the garage – laundry door was broken, and the lock had to be

changed. The landlord stated they paid the amount of \$167.97. Filed in evidence are photographs and a receipt.

The landlord testified that the storage shelf in the laundry room was missing and the garage door remote was not returned. The landlord stated that they paid the amount of \$105.95 for the replacement of the storage shelf and remote. Filed in evidence is a photograph of the missing storage shelf and a receipt for these items.

The landlord testified that two of the pendant lights in the kitchen were missing the glass. The landlord stated that the lights had to be replaced as you cannot just purchase the glass. The landlord stated that they paid the amount of \$168.29 to replace the light fixtures. Filed in evidence are photographs of the missing glass on the pendent lights and a receipt.

The landlord testified that two of the kitchen drawers were missing their sliding hardware. The landlord stated that they paid the amount of \$48.64 for the new sliding hardware and installed them on their own.

The landlord testified that the grass trimmer that the tenant borrowed from the strata was missing the battery. The landlord stated that they had to replace the battery for the strata. The landlord stated that the cost of the battery was the amount of \$140.50.

The landlord testified that the tenant also cut the strata garden hose into several pieces. The landlord stated they had to pay to replace the hose. The landlord stated the cost of the hose was \$74.42. Filed in evidence is a photograph of a hose cut into pieces and a receipt.

The landlord testified that the tenant also removed the toilet paper holder. The landlord stated that the cost of replacement was \$39.98. Filed in evidence is a receipt

The landlord testified that the toilet seat in the powder room on the main floor was damaged as it was melted in an area. The landlord stated the cost of replacement was the amount of \$48.14.

The landlord testified that the tenant also caused damage to the appliances that the cost to replace missing items and parts was the amount of \$2,680.38.

The landlord testified that the shelves in the refrigerator were removed, which they were found in another room; however, one shelf was missing. The landlord stated the cost of the missing shelf was the amount of \$127.65, plus taxes.

The landlord testified that the middle drawer of the refrigerator was also cracked and the cost to replace the drawer was the amount of \$69.57, plus taxes. Filed in evidence is a photograph of the crack in the drawer.

The landlord testified that the door of the refrigerator was also damaged as the tenants had glue something to the door, which could not be removed, and the door was dented and scratched. The landlord stated that the cost to replace the left front door was the amount of \$623.36, plus taxes. Filed in evidence is a photograph of the front of the refrigerator, which shows something is stuck to the door and scratches and dents.

The landlord testified that the dishwasher front panel also had a large dent in the door. The landlord stated the cost to replace the front panel was the amount of \$252.68. Filed in evidence is a photograph of the dented dishwasher door.

#### Loss of revenue

The landlord testified that they had made a previous application for an emergency eviction which the hearing which was held on December 22, 2020. The landlord stated at the hearing the tenants agreed that DB would vacate the rental unit by December 24, 2020. Filed in evidence is a copy of the Decision.

The landlord testified that due to the tenants' actions of breaching the Act, their tenancy agreement and the condition the rental unit was left in, they were not able to rent the unit for one month. The landlord seeks to recover one month of loss of revenue in the amount of \$1,950.00.

#### 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, the landlords have the burden of proof to prove their 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.

Residential Tenancy Policy Guideline #16 notes, "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It further notes "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. "

#### Unpaid rent

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

#### **Rules about payment and non-payment of rent**

**26** (1) *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 accept the undisputed evidence of the landlord that the tenants failed to pay rent that was due on the 15<sup>th</sup> of October, the 15<sup>th</sup> of November and the 15<sup>th</sup> of December. The landlord is entitled to rent owed when due. I do not need to consider loss of revenue for this period of time as the tenants were living in the premise on the date rent was due. I find the tenants breached section 26 of the Act, and the landlords suffered a loss. Therefore, I find the landlords are entitled to recover rent due for the said months in the total amount of **\$5,850.00**.

## Damages

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

### **Leaving the rental unit at the end of a tenancy**

*37 (2) When a 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.

In this case the tenants were provided a new rental unit at the start of the tenancy. I am satisfied that just eight month later the rental unit was returned to the landlord damaged. This is not normal wear and tear.

I accept the undisputed testimony of the landlord that items 1, 2, 3, 4, 6, 7, 8 and 9 were damage due to the action and neglect of the tenants. The photographs support this. I find the tenants breached the Act when they failed to make the repairs to the above items prior to the tenancy ending. Therefore, I find the landlords are entitled to recover the estimate cost of making the repairs in the amount of **\$4,249.16**.

I am further satisfied that the tenants did not return the keys at the end of the tenancy and that they had damaged the locks, removed the laundry room shelf, broke the glass on the pendent lights, removed the slides on two of the kitchen drawers, failed to return the battery to the grass trimmer, cut the garden hose in to pieces, melt the toilet seat and took the toilet paper holder. I find the tenants breached the Act when they failed to repair the damage, and this caused losses to the landlord. Therefore, I find the landlords are entitled to recover the cost to replace these items in the amount of **\$871.95**.

I am further satisfied that the tenants caused damage to the refrigerator and dishwasher. This is supported by the photographs. I find the tenants breached the Act, when they failed to repair these appliances at the end of the tenancy, and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover the cost of



the repair in the amount of \$1,073.26, plus taxes of \$128.79 for the total amount of **\$1,202.05.**

While I note the invoice further claims for damage to the washer and dryer; however, the landlord did not provide any testimony on these appliances at the hearing. Therefore, I dismiss this portion of the landlords claim due to insufficient evidence.

#### Loss of revenue

In this case, I am satisfied that the tenants breached the terms of their fixed term tenancy agreement and the Act. It was the tenants' action that resulted in the tenancy ending. I am further satisfied that the tenants left the rental unit in an unrentable condition when they failed to clean and repair damage. I find the landlords are entitled to an amount sufficient to put the landlords in the same position as if the tenants had not breached the Act. I find the landlords request for compensation for one month of rent is reasonable. Therefore, I grant the landlords the amount of **\$1,950.00.**

I find that the landlords have established a total monetary claim of **\$14,223.16** 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 **\$975.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$13,248.16.**

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

#### Conclusion

The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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: February 18, 2021

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Residential Tenancy Branch