



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: MNDC MND MNSD MNR FF  
Tenant: MNSD MNDC FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on January 14, 2021, and April 16, 2021. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord and the Tenant both attended the hearing. The Landlord acknowledged receipt of the Tenant’s application package and evidence and did not take issue with the service of those documents. I find the Tenant sufficiently served his application and evidence for the purposes of this hearing.

The Tenant acknowledged receipt of the Landlord’s 175 page application and evidence package. The Tenant stated he was able to understand and respond to the evidence well in advance of the hearing, so he took no issue with evidence service for this hearing. The Landlord explained that she had another hearing with the Tenant and she provided the same evidence package for both proceedings. The Landlord stated that she applied by way of a paper application, and it was our office who uploaded the documents on her behalf. I informed the Landlord that her 175 pages was not uploaded to this file, and was only uploaded as part of the other application/hearing proceeding.

The Landlord provided compelling testimony explaining that she provided the same 175 pages for both applications, and I accept that it was likely an administrative error that I did not have copies of her evidence package uploaded into this dispute, as she was relying on our office to upload the evidence she dropped off. After reviewing the evidence provided by the Landlord in her 175 page package, the Tenant was able to confirm that he received a full copy of this evidence, along with this Notice of Hearing (relating to this application). Both parties were agreeable to me viewing the Landlord’s

evidence package that was uploaded to their previous hearing. It does not appear there is any prejudice to either party, given the Tenant was properly served, well in advance of the hearing and he had a chance to review all evidence. The only issue appears to be an administrative error that prevented a copy of the evidence from being uploaded for me to view. By consent of both parties, I admitted, and reviewed the Landlord's full evidence package, which was submitted around October 26, 2020 (file number cited above). Ultimately, I find the Landlord sufficiently served her application and evidence for the purposes of this hearing.

Both parties were willing and able to proceed with both applications, in their entirety.

All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

##### *Landlord*

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

##### *Tenant*

- Is the Tenant entitled to the return of the security deposit held by the Landlord?
- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?

#### Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in

order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that monthly rent was \$1,600.00, and was due on the first of the month. The Landlord holds a security deposit in the amount of \$800.00. The Tenant moved into the rental unit around January 1, 2019, and moved out on August 18, 2020.

The Landlord stated that no move-in inspection was completed and no photos were provided to show the condition at the start of the tenancy. The only evidence the Landlord had to show the condition of the rental unit was some photos taken after the tenancy had ended.

### *Landlord's Application*

The Landlord is seeking the following items:

- 1) \$4,750.00 – Unpaid Rent

In the Landlord's documentary evidence, she provided a detailed breakdown, including banking (e-transfer) history, to show that the Tenant owes the above amount in rent. The Landlord stated that the Tenant began having troubles paying rent in February of 2020. The Tenant paid partial amounts for the remainder of his tenancy, as laid out in her itemized list. The Landlord pointed out that the amounts are corroborated by her bank statements showing the e-transfers.

The Tenant stated he believes he only owes around \$3,000.00. However, the Tenant was not able to explain how he arrived at this amount, and said that he made several "cash" payments that the Landlord has not accounted for. The Tenant was not able explain when these payments were made, nor did he have any evidence to show these payments were made, in cash.

- 2) \$53.72 – 3 x 10 litre gas cans
- 3) \$44.77 – 2 x 20 litre gas cans
- 4) \$87.99 – Propane tank

The Landlord explained that the Tenant rents a separate cabin on the property, and there are common spaces, which they both have access to, such as the driveway and some storage areas. The Landlord stated that the above noted gas cans went missing, and she later saw those same gas cans/tanks on the Tenants balcony. The Landlord

provided a photo showing gas cans in the driveway, as well as the gas cans she saw on the Tenant's deck, which she asserts are hers. The Landlord could not recall exactly when they went missing, but she estimates it will cost the above amount to replace them. The Landlord stated she does not have any proof that it was the Tenant who took the cans, or that the cans/tank seen on the Tenant's deck were in fact hers.

The Tenant stated he has recreational vehicles which require him to keep his own gas cans nearby, and he asserts the cans the Landlord is referring to were the ones he already owned. The Tenant denies taking any of the Landlord's gas cans or propane tank.

5) \$403.13 – replacement of 6 curtains

The Landlord stated that the Tenant got a cat, and their cat destroyed 6 curtains in the rental unit, which need to be replaced. The Landlord could not locate any receipts for this item. The Landlord also acknowledged that she did not do a move-in condition inspection, nor did she complete a condition inspection report. The Landlord also failed to provide any photos or evidence showing what conditions the curtains were in at the start of the tenancy. She only had photos of the damaged curtains at the end of the tenancy.

The Tenant stated that the curtains were not new and that the damage was pre-existing. The Tenant denied that he, or his cats caused any of the damage.

6) \$55.99 – Shower Rod

The Landlord stated that the Tenant broke the shower curtain rod in the bathroom, and the above noted amount is an estimate from a similar one she found online. The Landlord pointed to a photo taken at the end of the tenancy, showing the broken shower rod. The Landlord found a similar rod online as an estimate for the value of this item. The Landlord asserts that this item was present and not broken at the start of the tenancy. However, no condition inspection report was completed at the start, and the Landlord did not point out any photos of the shower rod at the start of the tenancy.

The Tenant stated that there was no shower rod in the rental unit at the start of his tenancy, and as a result, he had to go and buy one with his own money. The Tenant does not refute that this item broke, but since it was his own rod, he refutes that he owes the Landlord for this item.

7) \$610.00 – Cleaning fees

The Landlord pointed to the photos taken at the end of the tenancy to show how much garbage, debris, and dirt the Tenant left behind. The Landlord stated that she had to pay to dispose and clean up furniture and personal items left behind. The Landlord stated that the kitchen was filthy, cabinets were dirty and full of items, the floors were dirty, and there were stains on surfaces throughout the house. The Landlord provided a copy of the receipt showing she hired cleaners to come in at the end of the tenancy. The Landlord explained that it took the cleaners 16 hours at a rate of \$35.00 per hour.

The Tenant stated he cleaned up and he does not feel he should have to pay for the above noted amount. The Tenant did not speak to whether or not he left behind his belongings. The Tenant was vague about what cleaning he did.

8) \$228.26 – Alcohol Still

The Landlord stated she loaned the Tenant her stovetop alcohol still, and he failed to return it to her. The Landlord stated that she saw that the Tenant used it once, burned it, and left it on their deck to decay. The Landlord wants to recover the above amount which is the replacement value of the still. The Landlord was unable to point to any photos or proof in her evidence package to show that the Tenant borrowed, or ruined this item.

The Tenant denies that the Landlord ever loaned them the still, and have no idea why the Landlord is trying to blame them for this item. The Tenant stated there is no proof he is responsible for this item.

9) \$300.00 – Painting Supplies

10) \$840.00 – Painting Labour

The Landlord stated that the walls had to be repainted because the Tenant left scratches and wall damage all over the interior of the rental unit. The Landlord believes the Tenant had cats, which scratched the walls, leaving areas which had to be filled, sanded, and repainted. The Landlord stated that these areas were last repainted just prior to the previous tenancy, which was only 6 months in duration. The Landlord stated that the previous tenancy lasted for around 6 months before this tenancy started. The Landlord stated that she has a painting company, and got a good deal on the paint, but

she stated she does not have receipts to show the costs on the materials. The Landlord also did not provide a breakdown nor did she explain how many hours it took to repaint.

The Tenant stated that when he moved in, there was already wall damage from the Tenants before. The Tenant pointed out that there was no move-in inspection, nor are there any photos showing what it was like when they moved in. The Tenant denies that they caused any damage to the walls.

11) \$1,000.00 – Lost wages

12) \$241.34 – Staples Costs – Hearing Preparation

The Landlord stated that she took 2 days off work to prepare this application, and she lost out of work as a result. The Landlord used an hourly rate of around \$50.00 to determine her lost wages, as this is what she would have paid a person to replace her for the days she was absent to prepare for this hearing. The Landlord also wants to recover money she spent at Staples to prepare this documentation.

The Tenant stated the Landlord should not be able to claim this amount, and ask him to repay for her time lost at work or other costs.

### *Tenant's Application*

The Tenant stated that he was wrongfully evicted in the middle of a pandemic, and the Landlord pushed him out by issuing a 10 Day Notice in early August for unpaid rent. The Tenant also stated that in addition to being forced out by way of this 10 Day Notice, he also had to leave for his own safety because there was someone threatening him. More specifically, the Tenant asserts that the Landlord was telling his girlfriend's ex-partner about the relationship he was having with her, and his girlfriend's ex-partner started coming around and threatening him. The Tenant provided no proof to corroborate that the Landlord made any such statements, or that she is responsible for any threats he was receiving.

The Landlord denies making any such statements, and stated she would never get involved in the Tenant's personal life. The Landlord stated that this is a fabricated scenario to make her look bad. The Landlord explained that she issued the 10 Day Notice to the Tenant on August 6, 2020, for failing to pay rent on February 1, 2020, and March 1, 2020. The Landlord stated she had to wait until the restrictions were lifted in order to issue the Notice.

The Tenant filed an application for the following items:

- 1) \$2,000.00 – compensation “fine” pursuant to section 89(1) of the Act

The Tenant was asked to explain what he was seeking for this item, since section 89(1) does not speak to any fines or penalties. The Tenant responded by saying he wasn’t sure what he was seeking, and said “let’s move on”, and stated he did not wish to pursue or elaborate on this item further.

- 2) \$3,200.00 – compensation for being forced to move
- 3) \$1,265.51 – Hotel costs, and moving fees

As stated above, the Tenant feels the Landlord had no authority to issue him a 10 Day Notice. Further, the Tenant stated that the Landlord got involved in his business, which led to him receiving threats from his girlfriend’s ex-partner. The Tenant is seeking the equivalent of 2 month’s worth of rent due to the Landlord’s actions which forced him out. The Tenant is also seeking hotel costs and moving expenses because he had to move out quickly due to the Landlord’s illegal 10 Day Notice, and for getting involved in his affairs.

The Landlord stated that the Tenant was issued a valid, and legal 10 Day Notice in August because he failed to pay rent for February and March 2020. The Landlord stated that since these amounts were due prior to the pandemic period, she was entitled to issue the Notice. The Landlord also denies getting involved in the Tenant’s affairs such that he would have to move out as a result.

- 4) \$800.00 – Return of Security Deposit

The Tenant is seeking the return of the security deposit but acknowledged that he never gave the Landlord his forwarding address in writing at the end of the tenancy.

### Analysis

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 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.

Each application will be addressed separately. For each application, the burden of proof is on the person who made that application 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 other party. The Applicant must also provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

### *Landlord's Application*

The Landlord is seeking the following items:

- 1) \$4,750.00 – Unpaid Rent

I have reviewed the evidence and testimony presented, and I note that the tenancy is now over, so no repayment plan is required for any rent that accumulated during the pandemic period from March 2020 until August 2020.

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent (security deposit overpayment, emergency repairs paid for by the Tenant, illegal rent increases, or another Order by an Arbitrator).

I have weighed the two versions of events, and I find the Landlord has provided a more clear and compelling account of what was paid, and what is still owed for the period from February 2020, until August 2020. I have placed more weight on the Landlord's version of events. I do not accept the Tenant's assertion that he paid some of the rent in cash, as there is no evidence to support this, or evidence of any cash withdrawals etc. The Landlord provided a detailed breakdown, as well as bank statements, to show that the Tenant still owes \$4,750.00 in unpaid rent. I award this item, in full.

- 2) \$53.72 – 3 x 10 litre gas cans
- 3) \$44.77 – 2 x 20 litre gas cans
- 4) \$87.99 – Propane tank

I have reviewed the evidence and testimony on this matter, and I note the Landlord bears the burden to prove it was the Tenant who took these items, given she is the applicant on this matter.

The Tenant denies taking any of these items, and I do not find the photos provided by the Landlord are sufficient to prove that the cans present on the Tenant's deck were in fact the Landlord's or that the Tenant actually took these items. I do not find the landlord has sufficiently demonstrated that the Tenant is responsible for these items. These items are dismissed, in full.

5) \$403.13 – replacement of 6 curtains

Having reviewed this matter, I find the Landlord has provided no evidence to support the condition of the curtains at the end of the tenancy. It does not appear a condition inspection report was completed, which is a breach of section 23(1) of the Act. There is also a lack of documentary evidence (photos etc) to show whether or not the curtain damage was pre-existing, or caused by the Tenant.

The Tenant asserts the damage was pre-existing. Although the Landlord asserts the Tenant caused the damage, given the lack of documentation at the start of the tenancy, I find she has failed to sufficiently demonstrate it was the Tenant who caused the damage. Without further proof on this matter, I dismiss this item, in full.

6) \$55.99 – Shower Rod

Having reviewed the evidence and testimony on this matter, I find there is insufficient evidence to show that there was a shower curtain rod present at the start of the tenancy. Although the Tenant provided no proof that he bought his own during the tenancy, the onus is on the Landlord to demonstrate that there was one present at the start, that it was in reasonable condition, and that it broke, due to neglect or misuse during the tenancy. Again, the Landlord should have completed a move-in inspection and/or thoroughly documented the condition of the rental unit at the start, and end of the tenancy. I do not find the photos taken at the end of the tenancy are sufficient to show that the shower rod was present at the start, and that the Tenant is liable for this item. I dismiss this item, in full.

7) \$610.00 – Cleaning fees

Having reviewed this matter, I note the following portion 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*

*(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear*

The Tenant is also required to provide vacant possession to the Landlord at the end of the tenancy. Having reviewed the photos taken at the end of the tenancy, I find there is evidence to show the Tenant left behind furniture, debris, and personal items in a variety of areas. I also find there is evidence to show the Tenant left stains, and debris in several areas, which suggest the unit was not properly cleaned. I find the Tenant failed to leave the rental unit in a “reasonably clean” state, free from his belongings. Given this breach of the Act, I find the Landlord is entitled to recover the costs she paid to clean the rental unit. I award this item, in full.

8) \$228.26 – Alcohol Still

Having reviewed the testimony and evidence on this matter, I note the Landlord has not sufficiently demonstrated that the Tenants are responsible for this item. The Landlord bears the burden of proof to show that the Tenants are responsible for this item, and I find she has failed to do so. This item is not sufficiently documented by photo, or other documentation (condition inspection etc), such that I could find the Tenants are responsible for it's replacement. This item is dismissed, in full.

9) \$300.00 – Painting Supplies

10) \$840.00 – Painting Labour

Having reviewed this item, I note the onus is on the Landlord to demonstrate that the Tenant's breached the Act, the regulation, or the tenancy agreement, and that they caused the damage. The Landlord has no documentary evidence to demonstrate the condition at the start of the tenancy, and no way to prove that the scratches and wall damage was not present before the Tenants moved in. The Tenants stated that the damage was pre-existing, and deny they did the damage. I find the Landlord has not sufficiently demonstrated that the Tenants are responsible for any damage noted after they moved out, given the lack of evidence showing the condition at the start of the tenancy. I dismiss these two items, in full.

11) \$1,000.00 – Lost wages

12) \$241.34 – Staples Costs – Hearing Preparation

As the *Act* does not provide for the recovery of costs associated with pursuing a claim against a party to a tenancy, with the exception of the filing fee for the Application pursuant to Section 72(1) of the *Act*, I dismiss the tenants' claim for the costs of their registered mailings, without leave to reapply.

### *Tenant's Application*

The Tenant filed an application for the following items:

- 1) \$2,000.00 – compensation “fine” pursuant to section 89(1) of the *Act*

Having reviewed this item, I find the Tenant provided a poor explanation as to why he is entitled to this “fine”, given the section of the *Act* he cited is not related to this issue. In any event, the Tenants had an opportunity to explain why they were entitled to this amount, but they abandoned this opportunity and asked to move on. I do not find the Tenants have provided a sufficient explanation as to why this amount is owed, and under what basis. I dismiss this item, in full.

- 2) \$3,200.00 – compensation for being forced to move
- 3) \$1,265.51 – Hotel costs, and moving fees

First, I find it important to note that the 10 Day Notice was issued due to non-payment of rent, and not for non-payment of “affected rent”. This is an important distinction, because non-payment of affected rent has materially different considerations. “Affected rent” is rent that became due between March 18, 2020, until August 17, 2020, due to the COVID-19 pandemic. As this Notice only included rent that had accrued prior to that time, the Landlord was not required to issue a repayment plan, prior to issuing the Notice. Further, although there was a broad eviction ban in place from March until June 24, 2020, I note that at the time the Landlord issued this 10 Day Notice, she was entitled to do so, given the noted rent was not considered “affected rent”. In other words, at the time the Landlord issued the 10 Day Notice in early August, she was entitled to do so, because there was no longer a ban on issuing 10 Day Notices for rent that had accrued prior to March 18, 2020.

I find the 10 Day Notice was not illegal, and the Tenant's allegations on this matter are unfounded. Further, there is no evidence to show the Landlord had any involvement in the threats the Tenant was receiving from his girlfriend's ex-partner. I find there is insufficient evidence the Landlord did anything which would necessitate the Tenant to flee the unit.

The Tenant could have remained in the rental unit, and disputed the 10 Day Notice, but it appears he chose to move out. I do not find any evidence that the Landlord breached the Act, or the tenancy agreement, and I find there is insufficient evidence to demonstrate that the Tenant should be entitled to compensation for expenses he incurred after moving out (hotel costs, or moving costs). I also find there is insufficient evidence that the Tenant is entitled to any fines, or compensation. I dismiss the Tenant's application, in full.

4) \$800.00 – Return of Security Deposit

The Tenants are seeking the return of the security deposit which will be addressed further below after I determine what the overall amounts owing are for each application.

In summary, I the Tenant's application is dismissed, in full. The Landlord was partly successful for the following items:

\$4750.00 – Rent owed

\$610.00 – Cleaning costs

Total \$5,360.00

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 in this hearing, I also order the Tenant to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution. Section 72 of the *Act* also allows me to authorize that the security deposit (\$800.00) currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant.

In summary, I find the Landlord is entitled to a monetary order for \$4,660.00, in addition to being able to retain the security deposit, in full.

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$4,660.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: April 16, 2021

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Residential Tenancy Branch