



# 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 dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent and loss of rent, for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to ask questions, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. The parties confirmed they were not making any unauthorized recording of 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 agreed that the tenancy began on February 1, 2019. Rent in the amount of \$1,250.00 was payable on the first of each month. The tenant paid a security deposit of

\$625.00. The tenancy vacated the premise on or about the 10th of October, although they did not notify the landlord and return the keys until October 18, 2020.

The landlords claim as follows:

a.	Unpaid rent for October 2020	\$1,250.00
b.	Loss of rent for November and December 2020	\$2,500.00
c.	Cleaning and damages	\$ 647.50
d.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$4,497.50</b>

#### Unpaid rent for October 2020

The landlord testified that the tenant did not pay rent for October 2020 and failed to give notice to end their tenancy. The landlord stated that on October 10, 2020, a uhaul truck showed up and the tenant was moving their belongings from the rental unit. The landlord stated it was not confirmed until October 15, 2020 that the tenant had vacated the premises and then they had to arrange a move-out inspection with the tenant.

The tenant testified that the landlord gave them a letter that their boyfriend had to move out of the premise by October 5, 2020 or they would be given a notice to end the tenancy. The tenant stated that they decided to move-out. The tenant stated they did not pay any rent for October and did not give the landlord written notice to end the tenancy.

#### Cleaning and damages

The landlord testified that the tenant did not clean the rental unit at the end of the tenancy. The landlord stated the floors were dirty, the appliances had to be cleaned, the walls had to be washed and baseboards cleaned. The landlords seek to recover the cost they paid for cleaning in the amount of \$420.00. Filed in evidence is a receipt.

The landlord testified that the tenant also left garbage behind, and they spent two hours to remove and take to the disposal yard. The landlord stated they seek to recover two hours of their time at the rate of \$25.00 per hour and the dumping cost of \$30.50.

The landlord testified that the tenant also damage the walls by scuffing and there appeared to be nail polish on the wall. The landlord stated that it took them two hours

to make the repair and seek to recover the amount of \$50.00. Filed in evidence are photographs.

The landlord testified that they were missing light bulbs at the end of the tenancy, missing knobs on the cabinets, missing shower head and smoke detector. The landlords seek to recover the cost of \$97.00. Filed in evidence is a receipt.

The tenant stated they are not disputing that the rental unit had to be cleaned and garbage removed.

The tenant disagreed that they are responsible for missing light bulbs as they were not their when they moved into the premises. The tenant stated when they moved into the premises the cabinet knobs were loose or broken. The tenant stated they did remove the landlord's showerhead at the start of the tenancy; however, they had placed it in a bag underneath the sink. The tenant stated that the smoke detector was an issue during the tenancy and that they gave it to the male landlord. The tenant stated that they had installed their own and they removed it when they vacated. Filed in evidence are text messages.

JS testified that they purchased a new showerhead for their daughter as it was a removable one which was better for the child. JS stated they place the landlord's showerhead under the sink at that time.

JS testified that they purchased their daughter a smoke detector as the ones in the rental unit were not working.

#### Loss of rent for November and December 2020

The landlord testified that due to the condition of the rental unit they were unable to find a new renter for November 2020. The landlord stated that they could not advertise the premises until the unit was cleaned, and the repairs made. The landlord stated that they advertised the premise on October 26, 2020; however, they did not find a new tenant for the month of November or December 2020. The landlords seek to recover loss of rent in the amount of \$2,500.00.

The tenant testified that they do not agree that the landlords should be entitled to loss of rent. The tenant stated had the landlord advertised the rental unit earlier they could have found a new renter for November. The tenant stated that the landlord repaired the bathroom by replacing the toilet and flooring causing the delay in advertising.

The landlord confirmed they did replace the flooring and toilet in the bathroom.'

### 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.

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.

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.

### Unpaid rent for October 2020

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 landlord gave the tenant a letter on September 29, 2020, regarding an authorized person living in the rental unit. However, that letter was not a notice to end tenancy. The tenant was living in the unit on the day rent was due under their tenancy agreement and stayed in the unit until at least October 10, 2020 and vacating without

ending their tenancy in accordance with section 45 of the Act. I find the tenant breached the Act, when they failed to pay rent for October 2020, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for October 2020, in the amount of **\$1,250.00**.

### Cleaning and 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 tenant does agreed that they did not clean the rental unit or remove the garbage. I find the tenant breached the Act. Therefore, I find the landlords are entitled to cleaning cost in the amount of \$420.00, garbage disposal fees of \$30.50 and the time it took the landlords to remove and dispose of \$50.00 for a total amount of **\$500.50**.

The evidence of the landlord was that there was scuffing on the wall and there appeared to nail polish on the wall. However, the landlords did not do a move-in condition inspection report with the tenant. I have reviewed the landlords photograph image 10, I cannot compare to the photographs taken at the start of the tenancy. Therefore, I find the landlord has failed to provide sufficient evidence. Therefore, I dismiss this portion of the landlords' claim.

I am not satisfied that that all the light bulbs were working and in place when the tenant moved in as there was no move-in condition inspection report completed. Therefore, I dismiss the landlords' claim for light bulbs.

I am satisfied based on the before and after pictures that there were 2 missing knobs from the cabinets. I note the landlords claimed for three in their receipt. The evidence of the tenant was the knobs were broken and old. While I accept that maybe true it was

the tenant's responsibility to inform the landlord and not dispose of them. However, as I do not know the age of the knobs, I find it reasonable to grant the landlords a nominal amount of **\$1.00**.

I am not satisfied that the landlords have proven the tenant caused damage to the smoke detector. The evidence of the tenant was that it was not working, and they gave it to the landlord. The tenant purchased their own smoke detector and removed it at the end of the tenancy. Therefore, I dismiss this portion of their claim.

The tenant removed the showerhead and replaced it with their own which was removed at the end of the tenancy. It was the tenants responsible to reinstall the showerhead that they removed at the end of the tenancy. If the landlords were unable to locate the showerhead than the tenant is responsibility if it is not found at the end of the tenancy. Therefore, I find the landlords are entitled to recover the amount of \$32.98, plus taxes of \$3.95 for the total amount of **\$36.93**.

#### Loss of rent for November and December 2020

Under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

While I accept the tenant breached the Act when they vacated the rental unit on or about October 10, 2020. However, it was confirmed on October 15, 2020 that they had vacated.

The email dated October 15, 2020 reads in part,

Landlord

".. Could you please confirm if you have moved out? Also, there is mail here for you. Could you please provide a forwarding address that we can redirect the mail to and send the security deposit?"

Tenant

"I'm out of town for a while. My boyfriend ... can pick those things up later today and give you the keys?"

Landlord

"... is not on the residential agreement so we cannot deal with him. We are supposed to do an inspection once you vacate. When are you back in town so we can do the inspection?"

In this case, the tenant had the right to send her boyfriend to return the keys on October 15, 2020, the landlord cannot refuse someone the tenant has chosen to act on their behalf.

In this case, I find the landlords have failed to mitigate. The landlords knew the tenant was vacating on October 10, 2020, and it was confirmed on October 15, 2020. At the very least should have started to advertise the premise. The rental unit only needed to be cleaned and very minor repairs made, which did not make it unviewable, often potential renters view property prior to a tenant vacating. Further, the landlords made improvement to the bathroom that were not the responsibility of the tenant.

The landlords did not advertise the rental unit until October 26, 2020, because they wanted to wait to advertise the premise until they had cleaned the premise, made the minor repairs, and upgraded the bathroom, I find that was their personal choice. I find this was an unreasonable delay. Further the landlords did not provide a copy of the advertisement for verification. Therefore, I dismiss this portion of the landlords' claim.

I further find the landlords are not entitled to loss of rent for December 2020. This was not a fixed term agreement.

I find that the landlords have established a total monetary claim of **\$1,888.43** 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 **\$625.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$1,263.43**.

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.

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: May 19, 2021

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Residential Tenancy Branch