



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDL MNDCL, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent and loss of revenue, for damages to the unit, and for an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both parties confirmed under affirmation that they were not making a prohibited recording of this hearing.

The tenant confirmed they received the landlord’s evidence. The landlord stated they did not receive any evidence from the tenant. The tenant stated they sent it by registered mail; however, they cannot provide any further information on the date it was sent or the Canada post tracking number. As the tenant has not provided any evidence that their evidence was sent in accordance with the Residential Tenancy Branch Rules of Procedure, I find I must exclude the tenant’s evidence from this 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.

### Preliminary matters

At the outset of the hearing the landlord stated they are not proceeding with their claim for loss of revenue. Therefore, I find it appropriate to dismiss this portion of the landlord’s claim.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Background and Evidence

The parties agreed that the tenancy began on January 1, 2020. Rent in the amount of \$1,500.00 was payable on the first of each month. The tenant paid a security deposit of \$750.00. The tenancy ended on October 31, 2020. The tenant's security deposit was dealt with at a previous hearing.

The landlord claims as follows:

a.	Unpaid rent for October 2021	\$1,500.00
b.	Cleaning and carpet cleaning	\$ 502.80
c.	Replacement of mattress	\$1,003.52
d.	Replacement of stolen TV, DVD player and cords	\$ 327.03
e.	Replacement of shower curtain	\$ 6.72
f.	Fix holes and repaint	\$ 525.00
g.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$3,965.07</b>

Unpaid rent for October 2021

The landlord testified that the tenant did not pay rent for October 2020, although they promised they would.

The tenant testified that they paid \$1,400.00 rent by etransfer on October 2, 2020 and left the balance of cash on the stairs. The tenant confirmed several times at the hearing that it was paid by etransfer on October 2, 2020 and the tenant was even given the opportunity to check their bank account to confirm the date. The tenant stated the landlord did not give them a receipt.

The landlord argued the tenant did send an etransfer; however, the tenant had cancelled it. The landlord stated they always given the tenant a receipt for rent; however, as October rent was not paid, they would not be issuing a receipt. The landlord stated if rent was paid as stated by the tenant it would make no sense for them

to have served the tenant with a notice to end tenancy for unpaid rent for the unpaid rent issued on October 13, 2020.

The tenant argued they found a notice to end tenancy for unpaid rent on October 19, 2020, under a bench.

#### Cleaning and carpet cleaning

The landlord testified that the tenant did not properly clean the rental unit at the end of the tenancy. The landlord stated the appliances had to be cleaned the bathroom and all the ledges. The landlord seeks to recover the amount of \$150.00.

The landlord testified that the tenant left the carpet and the couch dirty and stained. The landlord stated they had to pay to have them cleaned. The landlord seeks to recover the cost of cleaning the carpet and couch in the amount of \$352.80.

The tenant testified that are not disputing that additional cleaning was needed to the rental unit.

The tenant testified that they did not clean the carpet as their tenancy was less than one year. The tenant stated they did have a pet. The tenant stated that they feel the cost of the landlord carpet cleaning was high as it could have been cleaned for a lower fee.

#### Replacement of mattress

The landlord testified that the tenant has his girlfriend spend the night without their consent. The landlord stated that the tenant's girlfriend must have had her menstrual cycle as there was blood on the mattress. The landlord stated they had to have the mattress replaced and seeks to recover the cost of \$1,003.62.

The tenant testified that claim is ludicrous. The tenant stated that the mattress was probably 20 years old.

#### Replacement of stolen TV, DVD player and cords

The landlord testified that the tenant was provided with two televisions, and a DVD player. The landlord stated that the tenant took one of the televisions, the DVD, and the cables. The landlord seeks to recover the cost in the amount of \$327.03.

The tenant testified that they were not provided with two televisions. The tenant stated they were provided with one television. The tenant stated that they would not take the DVD player as they never used it and that is an old way to watch movies that is not necessary in the digital time.

#### Replacement of shower curtain

The landlord testified that the tenant caused damage to the shower curtain as they used duct tape to fasten it to the wall. The landlord stated they had to purchase a new shower curtain and seek to recover the amount of \$6.72.

The tenant testified that they had to purchase their own shower curtain because the one give to them by the landlord was old and falling apart. The tenant testified that they did duct tape their own shower curtain to the wall because the shower head would spray water all over the floor.

#### Fix holes and repaint

The landlord testified that they had to have holes fixed in the walls and replace moulding around the door because the tenant has used nails to put a curtain. The landlord stated that they had to paint due to the damage. The landlord seeks to recover the cost of repairs and painting in the amount of \$525.00.

The tenant testified that they left the premises in good shape. The tenant stated that there were no big holes, just small holes from hanging items. The tenant stated they are not responsible for the cost.

#### 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 landlord has 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.

#### Unpaid rent for October 2021

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.***

...

In this case, I accept the evidence of the tenant that they sent an etransfers to the landlord on October 2, 2020. This was stated **several** times by the tenant and the tenant was even given the opportunity to look at their bank history during the hearing to confirm this.

However, I find it just a likely that the etransfers was cancelled as claimed by the landlord. The landlord is not required to give a rent receipt for money paid by etransfer as the tenant would have received a confirmation from their bank that it was accepted and deposited to the landlords account. A rent receipt is only required for cash payments.

The tenant did not provide any evidence that their etransfer was **accepted and deposited** by the landlord. It is easy to send an etransfers and then later cancel it. I would expect if rent was paid that the tenant would have provided the **confirmation of deposit** to the landlord's account and a copy of their bank statement. It would be insufficient to simply showing it sent.

Based on the above, I am satisfied that the tenant failed to pay rent for October 2020. Therefore, I find the landlord is entitled to recover unpaid rent for October 2020 in the amount of **\$1,500.00**.

### 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.

### Cleaning and carpet cleaning

The tenant did not dispute the landlord's cleaning cost of \$150.00. Therefore, I find the landlord is entitled to recover the cost of cleaning in the amount of **\$150.00**.

In this case evidence of the tenant was that they did not clean the carpets because their tenancy was less than one year. However, the tenant had a dog.

Under the Residential Tenancy Policy Guideline (the "PG") 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant is generally expected to clean the carpets **regardless of the length of tenancy**, if he or she, or another occupant, **has had pets which were not caged** or if he or she smoked in the premises.

The tenant claims the amount is high for cleaning the carpet. I have reviewed the receipt which shows the cost of cleaning the carpet is \$70.00, which I find reasonable. The additional amount of \$230.00 was for cleaning the couch. While the PG does not address cleaning of furniture as most tenancy furnishings are is not included, I find it would be reasonable to conclude since this a soft surface, such as the carpet it would

be the tenant's responsibility to clean as it is not uncommon that pet owners allow their pet to sit on furniture. I do not find the amount unreasonable. Therefore, I grant the landlord the total amount for carpet and couch cleaning in the amount of **\$352.80**.

#### Replacement of mattress

I am not satisfied that the mattress was damage by the tenant or a guest of the tenant. The landlord did not do a move-in condition inspection report. Further, when a mattress is provided, it is not uncommon that it would get stained under reasonable use. Therefore, I dismiss this portion of the landlord's claim.

#### Replacement of stolen TV, DVD player and cords

I find the landlord has failed to provide sufficient evidence. The evidence of the landlord was that the tenant was provided with two television, and a DVD player. The evidence of the landlord was that one television, the DVD player and cords were stolen by the tenant. The evidence of the tenant was that only one television was provided which the television and DVD player were left in the unit.

The landlord did not do a move-in or move-out condition inspection report. When furniture is provided as a term of a tenancy, it would be reasonable for the landlord to have a detail list of those items, and the condition of those items, and have the tenant sign that they are responsible for them. I find without such a list; I cannot determine what was provided with the tenancy. Therefore, I dismiss this portion of the landlord's claim.

#### Replacement of shower curtain

The landlord did not do a move-in condition inspection report. The evidence of the tenant was the shower curtain the landlord provided was old and damage. The evidence of the tenant was that they left their shower curtain behind and use duct tape on their shower curtain to ensure water would not escape. As I have no evidence on the condition of the shower curtain at the start of the tenancy. I find I cannot determine if it was the tenant's own shower curtain that was damaged. Therefore, I dismiss this portion of the landlord's claim.

#### Fix holes and repaint

The landlord did not do a move-in condition inspection report. As I have no evidence, such as photographs taken at the time the tenant moved in, I cannot determine this was

damage caused by the tenant. Therefore, I dismiss this portion of the landlord's application.

I find that the landlord has established a total monetary claim of **\$2,102.80** comprised of the above described amount and the \$100.00 fee paid for this application.

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 landlord is granted a monetary order in the above noted amount.

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: July 23, 2021

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Residential Tenancy Branch