



# 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 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, 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 they were not recording the hearing.

### Preliminary and Procedural Issues

At the outset of the hearing the tenant HL confirmed they are not representing their co-tenant BP. Therefore, I must consider if BP was served with the landlord’s application and Notice of Hearing. The landlord’s agent testified that BP was served by registered mail. Filed in evidence is a Canada post tracking number which shows BP accepted the documents on April 1, 2021. Therefore, I find BP was served in accordance with the Act.

At the outset of the hearing the tenant stated that they received the landlord’s evidence. The tenant stated that they seek an adjournment of this hearing in order for them to submit their own evidence. The tenant stated that they did not have the opportunity to submit evidence as they have been homeless.

The landlords objected to the hearing being adjourned as the tenant has had since April 2021 to submit their evidence.

In this case, I decline the tenants request for an adjournment for the purpose of submitting evidence. Although they may have been homeless for a period of time, I find the tenant had nearly five months to make alternate arrangements or to seek help in order to be able to submit their evidence on time. I find it would be unfair to adjourn this matter as the adjournment would not result in resolving the issue, and it would be prejudicial to the landlords.

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 May 15, 2020. Rent in the amount of \$2,850.00 was payable on the first of each month. The tenants paid a security deposit of \$1,425.00 and a pet damage deposit of \$1,425.00. The tenancy ended on March 15, 2021. Filed in evidence is a copy of the tenancy agreement.

The parties agreed a move-in and move-out condition inspection report (the "Report") was completed. Filed in evidence is a copy of the Report.

The landlords claim as follows:

a.	Unpaid rent	\$8,257.04
b.	Damages	\$2,419.67
c.	Pest control invoice	\$ 472.50
d.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$11,249.21</b>

### Unpaid Rent

The landlords' agent testified that the tenants did not pay the full rent for November 2020 as they only paid the amount of \$1,756.57 and December 2020, they only paid \$1,436.39. Leaving a balance due of \$2,507.04.

The landlord's agent testified that the tenants failed to pay any rent for February and March 2021, increasing the balance due of unpaid rent to \$8,207.04.

The tenant acknowledged they did not pay the full rent for November and December 2020 and that they paid no rent for February and March 2021. The tenant stated that they should only be responsible to pay rent for half of March 2021, as there was a settlement agreement made on March 8, 2021, that they would vacate the premises on March 15, 2021.

The tenant argued that in October 2020, they had to pay \$680.93 for emergency repairs to have the water tested because they were informed by the neighbour that the well water contained arsenic. The tenant stated that they had asked the landlord's agent for a copy of the last water test and they were informed by the landlord's agent that would come the next day to have the cistern decommissioned.

The tenant testified that had the water tested before the landlord's agent could attend so they could prove the water was bad before the landlord's agent did anything with the cistern. The tenant stated that because the cistern was found to be contaminated, they had to pay for the disposal of the water in the amount of \$112.50, have it flushed and then refill it with water at the cost of \$300.00.

The landlords argued that there are two cisterns on the property. One is an old well and not to be used and it was not attached to the cistern that is for the house. The landlords stated that they believe the tenants were diverting water from the old well into the cistern for the residence so they would not have to pay for potable water as they were operating businesses consuming lots of water.

The landlords argued they were never given the opportunity to be able to address the tenant's concerns or do any investigation before the tenants to actions. The landlords stated they have no idea which cistern the tenant had tested and have not received any documents.

The landlords argued that the tenant should be responsible for all of March 2021, rent because the tenants were already overholding the premises as they were served with a notice to end tenancy for unpaid rent.

### Damages

The landlord's agent testified that the tenants were to remove an old boat that was full of garbage. The agent stated that the tenants did not remove the boat or garbage and they had to pay the amount of \$1,449.00. File in evidence a receipt and a photograph.

The landlords testified that the tenants also had a firepit that was three feet high and full of metal, garbage and items relating to their taxidermy company. The landlord seeks to recover the cost of yard clean up in the amount of \$566.75. Filed in evidence is a receipt. File in evidence is a photograph of a firepit and a small amount of garbage in a container.

The landlord's agent testified that they provided the tenant with a water cooler in October 2020 since they were concern with the water. The agent stated that the tenant took the water cooler at the end of the tenancy. The landlord seeks to recover the cost of the water cooler in the amount of \$188.92. Filed in evidence is a receipt.

The landlord's agent testified that the tenant was provided with a full cistern of water at the start of the tenancy, and they had to have the cistern refilled at the end of the tenancy. The landlord seeks to recover the cost of \$225.00.

The tenant does not dispute the landlord's claim for removing the boat and the garbage in the boat. The tenant stated that their co-tenant was supposed to remove the boat and garbage but did not.

The tenant testified that they do not agreed to any other cost of garbage removal. The tenant stated that there is no other garbage noted in the move-out condition inspection report. The tenant stated this is an 8 acre and they are not responsible for the landlords' yard cleanup.

The tenant testified that they did take the water cooler, that was provided by the landlords. The tenant stated they just assumed it was theirs to keep.

The tenant testified that they are not responsible to have the water cistern full at the end of the tenancy. The tenants stated that it was provided full by the landlord at the start of the tenancy as a courteous.

#### Pest control invoice

The landlords testified that they seek to recover the cost of the pest control invoice because it was the tenant's action and neglect of leaving dog food outside and operating a taxidermy company that caused the infestation. The landlords stated that the tenant would also leave the garage door open.

The tenant testified that they are not responsible for pest control. The tenant stated that this is 8 acres of property and it is not uncommon for rats to enter the premises through holes. The tenant stated they would have the garage door open from time to time; however, that is reasonable when in use.

#### 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.

#### Unpaid rent

The tenant admitted they did not pay all rent for November and December 2020 and paid no rent for February and March 2021.

The evidence of the tenant was that they withheld a portion of rent for November, December 2020, and paid no rent for February and March 2021, because of emergency repairs for water testing, water disposal and to refill the water. However, the tenant did not give the landlord any opportunity to investigate or to rectify a problem if one existed as required by section 33(3) of the Act; Nor has the tenant given the landlord a written account of the emergency repairs accompanied by the receipts. I find the tenants have not met the requirements of section 33 of the Act. Therefore, I find the tenants were not entitled to withhold any rent.

Therefore, I find the landlords are entitled to recover rent for November (\$1,093.43), December 2020 (\$1,413.61) and February 2021 (\$2,850.00) in the total amount of **\$5,357.04**.

In this case, I accept that the tenant is not responsible for the full amount of rent for March 2021, as the parties had agreed that the tenants would vacate on March 15, 2021. Further, section 57(3) of the Act states a landlord may claim compensation from an overholding tenant for any period that the overholding tenant **occupies the rental unit** after the tenancy has ended. Therefore, I find the landlords are entitled to recover half the amount for March 2021, rent the amount of **\$1,425.00**.

### Damages

#### **Evidentiary weight of a condition inspection report**

**Section 21** of the Residential Tenancy Regulation states the following, in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The tenant accepted responsible that they are responsible for the cost of the disposal of the boat and garbage in the boat. I find the landlords are entitled to recover the cost of **\$1,449.00**.

I do not accept that the landlords' evidence that the tenants were responsible for any additional yard cleanup that required 14.5 hours of labour. This is not supported by the Report which shows the yard was left in clean condition. While I accept the landlord has provided a photograph of a firepit and a small amount of garbage in a blue garbage container this does not support a preponderance of evidence to the contrary and does

not support that this would take 14.5 hours to rectify. Therefore, I dismiss the landlords' claim for additional yard cleanup.

The evidence of the tenant was that they took the water cooler as they assumed, they could. I find the tenant did not have the right to take something that was not theirs. Therefore, I find the landlords are entitled to recover the cost of the water cooler in the amount of **\$188.92**.

I accept the tenant was provided with a full cistern of water as a courtesy from the landlords. However, the Residential Tenancy Policy Guideline 1, says the following

#### SEPTIC, WATER AND OIL TANKS

3. The tenant must leave water and oil tanks in the condition that he or she found them at the start of the tenancy e.g., half full.

Therefore, as the Report shows it was full at the start of the tenancy it was the tenants' responsibility to have it filled to the same level at the end of the tenancy. Therefore, I find the tenants breached the Act when they failed to fill the water cistern at the end of the tenancy. Therefore, I find the landlords are entitled to recover the cost of the water in the amount of **\$225.00**.

#### Pest control invoice

I reject the evidence of the landlords that the tenants were at fault for attracting rats to the property. Simply having a photograph showing that the tenants feed their dogs outside does not prove that this was the only thing that attracted the rodents to the property. This is an 8 acre of parcel land, in a forested area. It is not uncommon for rodents to naturally live in this environment. Further, the invoice provided by the landlords does not make any allegations that this was the fault of the tenants; rather than the rodents were access the premises through holes in the garage. I find the landlords have failed to prove the tenants violated the Act. Therefore, I dismiss this portion of the landlords' claim.

I find that the landlords have established a total monetary claim of **\$ 8,744.96** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord(s) retain the security deposit of **\$1,425.00** and pet damage deposit of **\$1,425.00** in partial satisfaction of the claim and I grant the landlord(s) an order under section 67 of the Act for the balance due of **\$5,894.96**.

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 and pet damage 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: August 30, 2021

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Residential Tenancy Branch