



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNSD, FFL

### Introduction

On May 17, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for unpaid rent, a monetary order for damage to the rental unit, and to keep a security deposit.

The matter was set for a conference call hearing at 1:30 p.m. on this date. The Landlord and Tenants attended the teleconference hearing.

The Landlord and Tenants were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenants confirmed that they received a copy of the Landlord’s documentary evidence. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to a monetary order for damage?
- Is the Landlord entitled to keep the security deposit?

### Background and Evidence

The Landlord and Tenants testified that the tenancy began on October 1, 2017 as a one-year fixed term tenancy, that continued thereafter on a month-to-month basis. Rent in the amount of \$1,525.00 was to be paid to the Landlord by the first day of each

month. The Tenants paid the Landlord a security deposit of \$750.00. Both parties testified that the Tenants moved out of the rental unit on May 1, 2021.

#### October 2020 Rent

The Landlord testified that the Tenants only paid \$1,225.00 towards October rent because they deducted \$300.00 from the rent without his agreement. The Landlord testified that a repairman at the unit accessed the Tenants rental unit causing a mirror to fall and break. The Landlord stated that he asked the Tenants to send him a photograph of the mirror and he would replace it or compensate the Tenants. The Landlord stated that the repairman credited him \$100.00 towards the cost of a new mirror and the Landlord agreed to pay the Tenants an additional \$100.00 for a total of \$200.00.

The Landlord stated that the Tenants unilaterally deducted \$300.00 from the rent for the cost of the mirror. The Landlord is seeking to recover \$300.00 for October 2020 rent.

In reply, the Tenants testified that the repairman swung open their unit door and their mirror broke, and they believe the mirror is worth \$300.00, so they deducted that amount from the October 2020 rent.

#### Damage

The Landlord did not provide a completed monetary order worksheet breaking down the specific claims for damage and assigning a monetary value to each claim. During the hearing the Landlord clarified his claims as follows:

Lawn damage/ power raking	\$260.40
Aerating the lawn	\$131.00
Damage to a shed door     \$100.00	\$100.00
Shrubs	\$153.65
total	\$645.05

#### Lawn Damage /Power Raking

The Landlord testified that the Tenants' dog urinated everywhere, and the lawn was not watered down. The Landlord testified that he had to pay for power raking of the lawn and for soil in order to re-seed because of damage caused by the Tenants' dog. The Landlord testified that the Tenants were expected to water down the lawn. The Landlord stated that the tenancy agreement provides that the Tenants would clean up

after their dog and help with lawn maintenance. The Landlord provided a copy of a receipt for the rental of a lawn machine in April 2019 in the amount of \$111.78. The Landlord provided photographs of the Tenants' yard.

In reply, the Tenants testified that over the four years they were there they maintained the lawn and trimmed dead flowers. The Tenants testified that the occupants living upstairs from them also had two dogs who were allowed to roam free and would come into the Tenants' back yard area. The Tenants testified that they only had use of the back yard. The Tenants testified that the lawn looked spectacular when they moved out.

#### Aerating the Lawn

The Landlord testified that the lawn was air raked and the Tenants were asked to not walk on that part of the lawn. The Landlord stated that the Tenants walked on the lawn and trampled it/ ruined it. The Landlord is seeking \$131.00 for the cost of aerating the lawn. The Landlord provided photographs of the lawn. The Landlord provided a copy of text message dated April 8, 2021 that states S & M aerated and seeded their lawn and asked that the Tenants access their unit by the other side or by going around. The Landlord provided a receipt dated April 2, 2021 in the name of S. S. for the amount of \$260.40. The Landlord provided four photographs showing the front lawn area and side lawn area.

In reply, the Tenants testified that they need to walk on the lawn to access their rental unit as there are no steppingstones present and there is no other safe access. They stated that the Landlord provided no forewarning to them that the lawn was being serviced and he should have provided better communication on how they would be able to access their rental unit.

In reply, the Landlord confirmed that the Tenants regular access to their rental unit was by walking across the lawn.

#### Damage to Shed Door

The Landlord is seeking compensation of \$100.00 for damage to a shed door.

The Landlord testified that the Tenants ripped a lock off of a shed door and damaged the base plate resulting in screws being removed. The Landlord stated that he has not had the door repaired but he has estimated the cost for repair. The Landlord stated that

he has provided photographs and video of the shed. The Landlord submitted that the Tenants damaged the shed instead of waiting for a solution.

In reply, the Tenants testified that they spoke to the Landlord about the shed and the Landlord told them to purchase a lock. The Tenants testified that the occupants living above them also placed a lock on the shed and the Tenants could not get in, so they phoned/ face-timed the Landlord. The Tenant stated that they removed 1 screw and there is no substantial damage to the door or shed. The Tenants stated that it would not cost \$100.00 to repair the shed.

### Shrubs and Soil

The Landlord testified that he has provided photographs showing damaged shrubs. The Landlord testified that he has not replaced the shrubs and is not sure if he will replace them. He is seeking the cost to replace five shrubs at \$19.98 each. The Landlord provided receipts for the purchase of shrubs in April 2019. The Landlord provided three photographs showing the shrubs.

In reply, the Tenants testified that, they watered the shrubs every day, and there was improper drainage which made it difficult to keep them alive due to seasonal impact.

### Security Deposit

The Landlord applied for dispute resolution on May 17, 2021 and included a claim against the \$750.00 security deposit. The Landlord testified that the Tenants provided him with their forwarding address in writing on May 16, 2021.

The Landlord testified that he has not returned any amount of the security deposit to the Tenants and that there was no written agreement that he could retain an amount from the deposit.

In reply, the Tenants testified that they sent their forwarding address to the Landlord using registered mail sent to him on May 2, 2021.

### Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Residential Tenancy Policy Guideline # 16 Claims in Damages provides:

*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.*

*An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:*

*“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

Section 26 of the Act provides that 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.

Based on the evidence before me, the testimony of the Landlord and Tenants, and on a balance of probabilities, I make the following findings:

#### October 2022 Rent

While it appears that the Landlord is responsible to compensate the Tenants for a broken mirror, the Tenants did not have the right to make a unilateral decision to deduct \$300.00 from the rent. I find that the Tenants were obligated to pay the full rent owing under the tenancy agreement for October 2022. I find that the Tenants owe the Landlord \$300.00.

If the parties cannot reach an agreement, the Tenants are at liberty to apply for dispute resolution seeking compensation from the Landlord for the broken mirror.

#### Lawn Damage/ Power Raking

A term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.

I have reviewed the tenancy agreement and I find that there is a one-page addendum that states the Tenants are responsible for assisting in some yard work and for the clean up animal feces. The Landlord testified that with respect to dog urine, the Tenants were expected to have watered down the lawn.

I find that the tenancy agreement does not specify what yard work the Tenants were responsible for and only mentions clean up of dog feces.

The Landlord testified that he paid for power raking at a cost of \$260.40; however, the only invoice in the amount of \$260.40 is dated April 2, 2021 and is not in the name of the Landlord. The invoice appears to be in the name of the occupants living in the upper rental unit and is for aeration and power raking but does not indicate what parts of the property were serviced.

The Tenants testified that they only had use of the back yard and that the dogs belonging to the upper occupants would often be in their backyard.

There are no other receipts or invoices provided from the Landlord other than receipts from April 2019 in the amount of \$111.78 for the rental cost of a lawn machine and receipts for the purchase of shrubs and fertilizer.

I find that there was no term in the tenancy agreement requiring the Tenants to water down the lawn due to dog urine and I find that Landlord's evidence on his loss is unclear and confusing. The Landlord's claim is dismissed without leave to reapply.

#### Aerating the Lawn

My review of the Landlord's evidence indicates that it was the upper occupants that had the front lawn aerated and seeded on April 2, 2021. The receipt is in the name of the upper Tenant. It is not clear why the Landlord is seeking \$131.00 for the cost of aerating the lawn and is not clear on whether he actually incurred this cost.

As noted above, there are no other receipts or invoices from the Landlord other than receipts from April 2019 in the amount of \$111.78 for the rental cost of a lawn machine and receipts for the purchase of shrubs and fertilizer.

In addition, I accept the Tenants submission that they needed to walk on the grass area for access to their rental unit. The emails from the Landlord to the Tenants indicate that the Landlord could discussed and reached an agreement on this issue with both Tenants prior to texting one of them on April 8, 2021.

The Landlord's claim for compensation for aerating the lawn is dismissed without leave to reapply.

#### Damage to Shed

I accept the evidence before me that the shed was damaged by the Tenants. After reviewing and considering the Landlord's evidence I find that the Landlord has not repaired the shed and has not proven the value of his loss. Since the Tenants are at fault and the value of loss is not proven, I award the Landlord nominal damages of \$25.00.

#### Shrubs

To prove a claim, the applicant must prove that the other party breached the Act or tenancy agreement. I am not satisfied that the Tenants were being negligent towards the shrubs. I accept the Tenants submission that improper drainage and seasonal impacts can affect the health of shrubs. In addition, I have reviewed the Landlord's receipts dated April 2019. Neither of the receipts provided by the Landlord shows the purchase of shrubs costing \$19.98 each.

The Landlords claim to be compensated for shrubs is dismissed without leave to reapply.

#### Security Deposit

I find that the Landlord applied against the security deposit within 15 days of receiving the Tenants' forwarding address. The security deposit of \$750.00 will apply towards any monetary awards granted to the Landlord.

#### Monetary Award

I award the Landlord the amount of \$325.00 for a loss of rent and a damaged shed.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Landlord has established a total monetary claim of \$425.00 comprised of \$325.00 for unpaid rent and a damaged shed and the \$100.00 fee paid by the Landlord for this hearing. I authorize the Landlord to keep \$425.00 from the \$750.00 security deposit.

I order the Landlord to repay the balance of the security deposit of \$325.00 to the Tenants. I grant the Tenants a monetary order for \$325.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

### Conclusion

The Landlord has established a monetary claim in the amount of \$425.00. I order that the Landlord can keep \$425.00 from the security deposit of \$750.00.

I order the Landlord to repay the balance of the security deposit of \$325.00 to the Tenants. I grant the Tenants a monetary order for \$325.00.

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: December 15, 2021

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Residential Tenancy Branch