



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MND MNDC MNSD FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on January 9, 2023. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing and provided affirmed testimony. However, the Tenant did not. The Landlord testified that he personally served the Tenant with the Notice of Dispute Resolution Proceeding and evidence package on May 12, 2022. Proof of service was provided into evidence. I am satisfied the Landlord has sufficiently served the Tenant with the Notice of Hearing and evidence.

The Landlord was 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 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 for damage to the unit, for damage or loss under the Act, or for unpaid rent?
- Is the Landlord authorized to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38?

### Background and Evidence

The Landlord explained that the Tenant had a hoarding disorder, and a previous hearing was held on April 11, 2022, where the Landlord was successful in ending the tenancy early in an expedited manner. The Landlord stated that the Tenant was extremely difficult and combative when leaving, which exacerbated costs and expenses for him. As part of the previous dispute resolution process, the Landlord was given an Order of Possession, and was authorized to retain \$100.00 from the deposits he held for the filing fee.

The Landlord stated that monthly rent was set at \$1,075.00 and was due on the first day of the month. The Landlord stated that as of the time of this hearing, he holds a security and pet deposit, totalling \$975.00. The Landlord stated that he did a move-in inspection with the Tenant, around November 18, 2021, and when he attended the unit to do the move-out inspection with the Tenant after he obtained the Order of Possession, the Tenant refused, and would not allow the inspection to proceed. The Landlord stated that the Tenant said "I don't care" and she was belligerent when the Landlord tried to do the move-out inspection.

The Landlord provided a monetary order worksheet to itemize what he is seeking in this application, which totals \$4,430.71. These items are as follows:

1) \$285.00 – Cleaning costs

The Landlord stated that he hired a cleaner to come and clean up the rental unit after the Tenant moved out, since the Tenant failed to do any cleaning. However, the Landlord did not provide any breakdown of the hours it took to clean, nor did he provide any receipts or invoices for this charge.

2) \$408.75 – Painting

The Landlord stated that the Tenant was a hoarder, was extremely messy, and was smoking crack and marijuana in the rental unit. The Landlord stated that the walls of the rental unit smelled and could not be cleaned. As such, he stated that he painted the unit himself, and it took 5 gallons of paint to cover the 2-bedroom unit. The Landlord provided a copy of the receipt for one gallon of paint, and stated that he had to go back 4 more times, for a total of 5 gallons of paint at \$81.75 each. The Landlord stated that the rental unit was last repainted in 2019 sometime.

3) \$1,386.95 – Flooring

The Landlord stated that the Tenant caused significant damage to the flooring in one of the bedrooms. The Landlord provided photos of the damage, taken at the end of the tenancy. As per the move-in condition inspection report, the floors were in good condition at the start of the tenancy. However, the Landlord is unsure how old the floors were because he has only owned the rental unit for a few years. The Landlord provided a copy of the quote for this item, and stated that it ended up costing him the exact amount of the quote to replace the laminate flooring in the bedroom. The Landlord stated that he tried to find matching flooring for the damaged areas in the bedroom, but could not, so he had to replace this one room only.

4) \$19.22 – “Doorslide” guider

The Landlord stated that the Tenant ripped the sliding closet door off the tracks in the spare bedroom and broke the slider mechanism. The Landlord stated he replaced this piece, and a receipt was provided into evidence.

5) \$12.22 – Dump fees

The Landlord stated that the Tenant left behind lots of furniture when she abandoned the unit. More specifically, the Landlord stated that the Tenant left a bookcase, dresser, couch, and piles of garbage, which the Landlord had to take to the dump. He paid the above noted amount, and a receipt was provided.

6) \$216.00 – Motel room

The Landlord stated that he had an Order of Possession from his hearing in April of 2022, and after he served this to the Tenant, she refused to leave unless the Landlord loaned her money for one night at a local hotel. The Landlord stated that the Tenant locked the Landlord out of the rental unit, and demanded he loan her money for the hotel before she would comply with the Order of Possession. The Landlord stated he loaned the Tenant the money, and he would like this back. The Landlord provided a receipt for this item.

7) \$100.00 – Blinds

8) \$32.72 – Pot light

The Landlord stated that the Tenant broke one of the blinds and one of the pot lights in the rental unit and it cost him the above noted amount to replace it. However, the Landlord did not provide any receipt for these items.

9) \$200.00 – Filing fee

The Landlord stated he is seeking this amount for this filing fee, plus the filing fee from his previous dispute resolution. The Landlord confirmed he already received permission as part of his previous dispute resolution, to retain \$100.00 from the deposits to compensate him for that filing fee but wanted to include it as part of this hearing as well.

10)\$694.85 – Storage locker/shipping container

The Landlord stated that the Tenant asked to borrow money to help her move some of her things out of the rental unit. The Landlord stated that the Tenant asked for money to pay for a mobile shipping container and storage locker for the month of April, otherwise she would not move out, regardless of whether or not there was an Order of Possession. The Landlord stated that the Tenant had an overwhelming amount of personal belongings, so he felt he had to loan her the money for this item, otherwise she would probably not move out. A receipt was provided, and the Landlord stated that he paid the storage company directly. This item was paid for on April 8, 2022, which is 3 days before the Landlord obtained an Order of Possession at the previous hearing.

11)\$1,075.00 – April rent

The Landlord stated that the Tenant failed to pay any rent for the month of April 2022, and she did not move out until more than halfway through the month. The Landlord also stated that the Tenant left a significant mess to clean up, which precluded him from re-renting it sooner.

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*.

The applicant bears the burden of proof 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. Once that has been established, the applicant must then 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.

The Landlord provided a monetary order worksheet to itemize what he is seeking in this application, which totals \$4,430.71. These items are as follows:

1) \$285.00 – Cleaning costs

I have reviewed the testimony and evidence on this matter, and I find the Landlord has failed to sufficiently demonstrate the value of his loss, as there is no receipt for this item. I dismiss this item, in full.

2) \$408.75 – Painting

I have reviewed the testimony and evidence on this matter. I note the Landlord stated that the Tenant was smoking “crack” and other drugs in the rental unit, which caused the walls to smell, even after cleaning. I find this type of activity is egregious and is well beyond normal wear and tear, and as a result I decline to utilize Policy Guideline #40 in determining the residual value left for the interior painted walls (which is typically only 4 years). I award this item, in full, as I accept that the unit would have required repainting largely because of drug use (smoking) and hoarding. I award \$408.75, which is the paint cost for 5 gallons of paint.

3) \$1,386.95 – Flooring

I have reviewed the testimony and evidence on this matter. I note the floors were in acceptable condition at the start of the tenancy. The photos taken at the end of the tenancy show significant damage to the laminate flooring. I accept that this damage was caused by the Tenant and the Tenant ought to be liable for some of the cost to replace the floor in the bedroom. However, I note the Landlord had no idea how old the flooring was. As such, it is difficult to determine what, if any, residual value was left in the flooring.

I note that 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.

In this case, I am satisfied that the Tenant caused the damage to the flooring, in breach of section 32(3) of the Act, and she ought to be liable for some of the replacement cost. However, it is impossible to determine the residual value of the flooring given the Landlord had no idea how old it was. As such, I find a nominal award is appropriate. I award \$500.00.

4) \$19.22 – Doorslide guider

I have reviewed the testimony and evidence on this matter. I accept the undisputed testimony that the Tenant broke this item, and the Landlord incurred the above noted expense to replace it. I award this item, in full.

5) \$12.22 – Dump fees

I have reviewed the testimony and evidence on this matter. I accept that the Tenant left many unwanted items and garbage, and I am satisfied that the Landlord had to incur the above noted expense to remove these items. I award this item in full.

6) \$216.00 – Motel room

I have reviewed the testimony and evidence on this matter. I note that the Tenant was legally required to vacate the rental unit to comply with the Order of Possession served to her following the hearing on April 11, 2022. However, she did not, and instead demanded that the Landlord loan her money for a hotel for one night, otherwise she would not leave. The Tenant had no right to demand this and threaten to not comply with the Order and I find she is liable for this item, in full, as she appears to have used her unlawful possession and overholding of the rental unit to leverage a free night at the Landlord's expense.

7) \$100.00 – Blinds

8) \$32.72 – Pot light

I have reviewed the testimony and evidence on this matter, and I find the Landlord has failed to sufficiently demonstrate the value of his loss, as there is no receipt for either of these items. I dismiss these items, in full.

9) \$200.00 – Filing fee

I have reviewed the testimony and evidence on this matter. I decline to award any of the filing fee from the last hearing, as that amount has already been awarded. The filing fee for this application will be addressed further below.

10)\$694.85 – Storage locker/shipping container

I have reviewed the testimony and evidence on this matter. I find the Landlord is not entitled to the recovery of this amount, as it appears it was more of a private loan or offer, which falls outside of the Act. More specifically, I note the Landlord decided to pay for this item on April 8, 2022, which was before the Landlord was given an Order of Possession. At that time, the Tenant was not yet legally required to vacate, and this appears to be a private loan or offer, which I find falls outside of the scope of the Act. I find there is insufficient evidence that this expense was incurred as a direct result of a breach of the Act, or for failure to comply with an Order, since the payment for this was made before the hearing (and related Order of Possession was issued.) I decline to award this item.

11)\$1,075.00 – April rent

I have reviewed the testimony and evidence on this matter. I find the Tenant is liable for this item, in full, as she failed to pay any rent for April, and she failed to vacate the unit until part way through the month. Then, when she did leave, she left behind debris and damage, which prevented the Landlord from re-renting sooner. I find she is liable for this month, in full.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with this application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the *Act*, I authorize that the security and pet deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Total of items listed above	\$2,231.19
Filing fee	\$100.00
Less: Security and pet Deposit currently held by Landlord	(\$975.00)
<b>TOTAL:</b>	<b>\$1,356.19</b>

### Conclusion

The Landlord is granted a monetary order in the amount of **\$1,356.19**, as specified above. 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: January 10, 2023

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Residential Tenancy Branch