



# 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 4, 2024, and February 1, 2024. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord (and two agents) and one of the Tenants attended the hearing and provided affirmed testimony. The parties agreed to serve each other via email, as per the RTB-51 provided into evidence. The Landlord sent their Notice of Dispute Resolution Proceeding and evidence all by email on July 19, 2023. The Tenant acknowledged receiving this and I find it was sufficiently served.

The Tenant did not upload any evidence to this dispute resolution proceeding, involving the Landlord's application, and instead uploaded evidence to her own separate application. As stated to the Tenant is the hearing, her own application is separate and is not part of the Landlord's application, and I am unable to consider evidence uploaded to a different file # in support of a different application as part of this proceeding.

I note that on December 5, 2023, the Tenant responded to an email from the RTB and confirmed that her application was no longer required, and that it was withdrawn. Following that, the RTB sent as confirmation email saying the Tenant's application was withdrawn, and it does not appear the Tenant took issue with this. It was removed from being crossed with this file at that time. As such, this proceeding is only to deal with the Landlord's application for monetary compensation and the Tenant will have leave to reapply for any matters that are still outstanding after the conclusion of this proceeding.

Since the Tenant did not provide or upload any evidence into the Landlord's file, I find it is not admissible. As stated above, I am unable to consider evidence that is uploaded

as part of a different application made by the Tenant, and one that has been withdrawn and is not part of this proceeding today.

Both parties were 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.

#### Issue(s) to be Decided

- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to compensation for unpaid rent or utilities?

#### Background and Evidence

The Landlord confirmed that she collected a total of \$1,800.00 as a security deposit (\$900.00 for general items, and \$900 for furniture). The Landlord still holds this amount. The tenancy started on or around August 31, 2022, and was set to be a fixed term tenancy agreement expiring at the end of August 2023.

As per the condition inspection report (the CIR), the parties did a move-in inspection on August 31, 2022. The Tenants did not attend the move-out inspection and it was conducted in their absence on July 2, 2023.

The Landlord stated that on May 2, 2023, the Tenant sent an email to them saying that she wanted to end the tenancy as of the end of June 2023. The Landlord provided a copy of the response to that email, which they sent to the Tenant on May 2, 2023. It states, in part, that the Landlord is taking issue with the breach of the fixed term tenancy agreement, and that there may be financial liability. The parties did not come to any formal agreement at that time, although the Tenant continued to work towards leaving by the end of June, and the Landlord accepted that this was the Tenant's plan.

As part of the email from May 2, 2023, sent by the Landlord to the Tenant, the Landlord stated to "get ready" for a move-out inspection at 1:00 pm on June 30, 2023. The Tenant acknowledged getting this email, and provided no evidence that she responded to the Landlord, in writing, to say that this time would not work for her. The Landlord denies being told the time wouldn't work for the Tenant. Subsequently, the Landlord

attended the rental unit on June 30, 2023, and waited for the Tenant but she did not show up. As such, the Landlord sent the Tenant a notice of final opportunity for inspection, on the approved form, via email on June 30, 2023. This inspection was set to occur on July 2, 2023. The Tenant acknowledged getting this email, but she never told the Landlord that time would not work for her. The Tenant stated she never agreed to the time, but also that she never took issue with it.

The Landlord attended the unit on July 2, 2023, as planned, and did the inspection without the Tenant, because she did not appear.

The Landlord is seeking the following items:

- 1) \$2,700.00 – 1.5 months rent (July and half of August)

The Landlord pointed out that this is a fixed term tenancy agreement and it did not end until the end of August 2023. The Landlord stated that as soon as the Tenants gave notice that they would be leaving, they posted the ad to re-rent the unit. This ad was posted in early June but the Landlord increased the rental amount by \$200.00 per month over what the Tenant paid. The Landlord stated they were unable to re-rent the unit until August 15, 2023, so they lost out on rent for July and half of August.

The Tenants do not feel they should have to pay this because they assert they were given verbal permission to walk away from the tenancy before the end of the fixed term. However, the Landlord denies that they agreed to this.

- 2) \$1,708.00 – general repair invoice

The Landlord pointed to the invoice provided into evidence which shows this item is comprised of 4 different items. First, it is to repair the broken kitchen cabinet drawer front below the kitchen sink. Photos were provided of the damage. The Landlord stated that this was not broken at the start, but at the end it was water damaged, and broken, and needed replacement. The second item is to repair the damaged door frame near the bedroom. Photos were provided showing a poor patch/repair job was performed, which required further repair. The third item was to repair one of the stove elements which was burned out and not working. The other item on this invoice was for wall repair and general repainting.

The Tenant denies doing any of the damages noted and asserts that the stove was very old at the start of the tenancy, so it likely failed due to age. The Tenant asserts the kitchen cabinet was damaged at the start of the tenancy.

- 3) \$315.00 – Carpet cleaning
- 4) \$183.75 – general cleaning

The Landlord stated that the Tenant failed to clean the carpets at the end of the tenancy, as evidenced by the photos taken by the Landlord at the end of the tenancy showing stains and dirt. The Landlord also stated that they had to pay for a cleaner to

come and finish cleaning the unit since the Tenant failed to clean the kitchen cabinets, the drawers, the stove, and the dryer.

The lack of cleaning was noted in the condition inspection report as well. Invoices were provided for the above noted amounts.

The Tenant stated that she vacuumed the carpets but denied that they needed steam cleaning or wet cleaning. The Tenant feels she left the unit sufficiently clean.

5) \$182.92 – Utility bills

The Landlord stated that the Tenant was responsible for 1/3 of the utility bills (water, electricity and gas), but at the end of the tenancy there were a few outstanding bills that were not paid. These bills were provided into evidence for the last part of the tenancy, and the Landlord stated that they are seeking 1/3 of the total bills to cover the Tenants unpaid portion.

The Tenant asserts she paid for all her bills but she did not have any evidence to show these amounts were paid by her.

6) \$394.37 – 4 dining chairs

The Landlord stated that the Tenant damaged these “designer” chairs, and they estimated it would cost double this to replace them, as per the screenshot provided into evidence.

The Tenant denies doing any damage, and asserts the chairs were old.

7) \$450.00 – Sofa replacement

The Landlord stated that as shown in the photo, the Tenant ripped part of the upholstery on the couch that was included as part of this furnished rental. The Landlord provided a screenshot of a new couch and they are seeking 1/3 of this cost because only one of 3 cushions was damaged.

The Tenant denies doing any damage and asserts that the couch was old and well used.

8) \$224.00 – Chair

The Landlord stated that this was to replace the chair in the living room, which was a “designer” fabric chair. The Landlord pointed to the photos to show the damage but did not provide any receipt or invoice to corroborate this amount.

The Tenant denied doing this damage and stated she only ever used the chair normally, and if something was wrong with it, then it was because it was old and worn.

### 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*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

### Extinguishment and the Security Deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy. However, I find it important to note that extinguishment only applies to claims for damage to the rental unit. In this case, the Landlord also filed a claim to recover unpaid utilities, and cleaning fees. As such, I find extinguishment does not apply.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants’ forwarding address in writing to repay the security deposit or file a claim against it. The tenancy ended on or around June 30, 2023, and the Landlord filed this application against the deposits on July 11, 2023, which was within the allowable 15 day window. As such, I find the Tenant is not entitled to double the security deposit. I note the Landlord still holds \$1,800.00 in deposits, which will be addressed further below, after determining the items sought by the Landlord.

The Landlord owes interest on the deposits, but only for 2023, and 2024, in the amount of \$39.41.

With respect to the condition inspection report, I note the parties met and conducted a move-in inspection. The report was completed at that time. Then, at the time of move, there was dysfunction with respect to the move-out inspection. More specifically, the Landlord provided an opportunity for the inspection on June 30, via email, and the Tenant received this email but did not address it directly. Then, after the Tenant failed to attend, the Landlord provided a notice of 2<sup>nd</sup> opportunity to do the inspection, which the Tenant received that same day, June 30. The Tenant failed to attend the second time for the inspection and there is no evidence that she communicated that this time would not work. I find the Landlord complied with the requirements to give the Tenant 2 opportunities, and I find the Landlord was entitled to conduct the move-out inspection report in the Tenant's absence. I find the move-in and move-out condition inspection report are reliable and are admissible. I have also considered the photos provided into evidence.

Next, I turn to the Landlord's monetary items, as laid out above.

1) \$2,700.00 – 1.5 months rent (July and half of August)

I find this was a fixed term tenancy spanning until the end of August 2023. There is no evidence to support that the Tenant had permission to vacate the agreement early, without liability. I find the Tenants were not in a legal position to end the tenancy early, without penalty, and I find the Tenants breached section 45(2) of the Act by giving notice before they were legally entitled to. I find the Tenants are liable for rental losses until the end of the fixed term. However, I also find the Landlord is required to mitigate any losses, and I find that by raising the rent by \$200.00, they likely contributed to the muted interest and delay in re-renting the rental unit. I note the Landlord reposted the ad right away, but it was at an increased price. I find this is partial mitigation. Policy Guideline #5 speaks to this issue and I hereby award a reduced amount of \$1,800.00, rather than \$2,700.00 claimed.

2) \$1,708.00 – general repair invoice

I note this invoice is comprised of 4 items. Painting and wall patching, broken stove element, door frame repairs, kitchen cabinet repair. I have considered the condition inspection report and the photos. I am satisfied that the Tenants caused some minor wall damage, which required some localized repairs. However, I am unclear how old the

interior paint is, and whether the paint was at the end of its useful life expectancy of 4 years (as per the guidelines). I find the Tenant ought to be responsible for some of this cost to help pay for some damage but not all the repainting costs. However, I note the invoice does not break down these tasks and costs fully.

Further, I am satisfied that the Tenant caused damage to the kitchen cabinet and the door frame, as there was no damage noted on the move-in condition inspection report, yet at the end of the tenancy, they were broken.

Section 21 of the Regulations states:

*21 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.*

There is no preponderance of evidence to the contrary and I am satisfied that the Tenant caused damage to the door frame and the cabinet. It is unclear how old the stove was, so it is also unclear if that product was at the end of its useful life expectancy. Further, the invoice for this item does not break down the costs in an itemized way, such that I could know what each item cost.

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 find a nominal award is appropriate, given the poorly itemized invoice, and considering the Tenant is liable for some of the damages. I award a nominal award of \$500.00 for all these items.

- 3) \$315.00 – Carpet cleaning
- 4) \$183.75 – general cleaning

I find the condition inspection report and the photos demonstrate that the unit was not sufficiently clean at the end of the tenancy. The Tenant failed to provide a preponderance of evidence to the contrary and I award these items, in full.



5) \$182.92 – Utility bills

There is no dispute that the Tenants owe 30% of the overall bills (water, gas, electricity). The Tenant stated she paid these bills already, but had no evidence to support that this was done. The Landlord provided copies of the 3 different utility bills, and is seeking payment for the Tenant's portion at 33%. I find the Tenant is liable for these amounts, in full.

6) \$394.37 – 4 dining chairs

7) \$450.00 – Sofa replacement

8) \$224.00 – Chair

For these items, I do not find the Landlord has sufficiently demonstrated the age of these items, such that I could be satisfied they had any useful life expectancy left, as defined by the guidelines. It is not clear if these items were 2 years old, or 25 years old. Without more evidence, I find the Landlord had failed to sufficiently demonstrate that these items were damaged due to misuse or neglect, rather than due to being at end of life. I dismiss all these items, in full.

In summary, I find the Tenants are liable for the above noted items, which total \$2,981.67. Pursuant to section 72 of the Act, I find the Landlord is entitled to recover the filing fee cost of \$100.00, and is entitled to retain the security deposit (plus interest) to offset what is owed. After deducting the deposit from the amount owing, the Landlord is granted a monetary order for the balance owed in the amount of \$1,242.26.

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,242.26**. 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: February 23, 2024