



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit, damage or loss under the Act, regulations or tenancy agreement, retention of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard.

At the commencement of the hearing, the tenant requested an adjournment. The tenant explained that he needed legal representation due to his severe Attention Deficit Disorder in order to deal with the landlord's claims against him and that he had not been able to obtain legal assistance since becoming aware of the landlord's application on July 28, 2009. The tenant also claimed that he wanted to present witnesses to respond to the landlord's assertions. After speaking with the tenant I determined the tenant was quite capable of representing himself in this proceeding. I also determined that the tenant has had ample opportunity to request witnesses appear on his behalf and I was not provided a reasonable explanation as to why the witnesses were not present. Therefore, I denied the tenant's request for an adjournment and the hearing proceeded.

As a preliminary issue, the tenant submitted the landlord served him with the landlord's application on July 28, 2009 which was more than three days after making the application on July 8, 2009. In considering the tenant's position, I noted that the hearing package was generated by the Residential Tenancy Branch on July 13, 2009. The landlord provided documentary evidence that the landlord attended the post office on July 14, 2009 to send the hearing package to the tenant. The envelope was marked "unknown" and the post office recorded the addressee as "moved/unknown". The landlord was then served with the Tenant's Application for Dispute Resolution which cited the same service address for the tenant used to mail the landlords' hearing package on July 14, 2009. The landlord provided evidence that upon receiving the tenant's application, the landlord made a second attempt to serve the tenant on July 25, 2009 and that the hearing package was received by the tenant on July 28, 2009.

Upon consideration of the evidence before me, I am satisfied the landlord made every reasonable effort to serve the tenant in accordance with the requirements of the Act and that the tenant attempted to avoid service. Therefore, I rejected the tenant's position that the Landlord's application should be dismissed based on failure to serve the tenant within three days of making the application.



# Dispute Resolution Services

Page: 2

Residential Tenancy Branch  
Ministry of Housing and Social Development

As another preliminary issue, the tenant submitted that the landlord's application was not complete. The tenant pointed to the detail for dispute section of the Landlord's application. The last sentence appears to be cut off. The landlord explained that the online application permits a maximum of 500 characters in the details of dispute box. The landlord served the Residential Tenancy Branch and the tenant with a detailed evidence package as part of this claim more than five business days before this hearing, which the tenant acknowledged receiving. Therefore, I do not find the tenant unfairly prejudiced and I reject the tenant's request to dismiss the Landlord's application on the grounds it was incomplete.

After considering several technical issues raised by the tenant, the parties were informed that this hearing would proceed based on the documentary evidence served upon the tenant and verbal testimony presented to me by both parties.

The hearing ended approximately 1 hour and 43 minutes after the hearing commenced. The tenant was ending his final submission when the phone disconnected due to time constraints. I was satisfied the tenant had adequate opportunity to respond to each of the landlord's claims and it was not necessary to reconvene the hearing.

## Issues(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit?
2. Has the landlord established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
3. Retention of the security deposit.
4. Award of the filing fee.

## Background and Evidence

Upon hearing undisputed testimony of both parties, and upon review of the documentary evidence before me, I make the following findings. The tenant began occupying the rental unit April 1, 2004 as one of two co-tenants. The co-tenancy ended in 2005 and the landlord and tenant entered into a new tenancy agreement effective August 1, 2005. Over time the landlord and tenant entered into new tenancy agreements with the most recent being signed by the parties April 30, 2009 for a two month fixed term set to expire June 30, 2009. The monthly rent was \$700.00 and the landlord retained a \$300.00 security deposit after the co-tenancy ended. The tenant vacated the rental unit July 1, 2009. A move-in inspection report was completed April 3, 2004 and signed by the co-tenant. A move-out inspection report was completed July 1,



# Dispute Resolution Services

Page: 3

Residential Tenancy Branch  
Ministry of Housing and Social Development

2009 and was signed by the tenant. The move-out inspection report indicates that the tenant did not agree with the move-out inspection report.

The landlord requested compensation from the tenant in the total amount of \$2,717.29. The landlord and tenant provided the following submissions.

Replace locks -- \$ 82.85

The tenant was provided two sets of keys but only returned one set on July 1, 2009. The landlord changed the locks on July 2, 2009 and found the second set in his mailbox on July 5, 2009. The tenant testified that when he vacated the rental unit he told the landlord that he would obtain the second set of keys for the landlord as soon as possible so the tenant saw no need for the landlord to have the locks changed.

Replace carpet – \$ 390.00 (30% of replacement cost)

The landlord testified that the carpets were stained and smelled strongly of urine. The landlord stated that the tenant had a cat in the rental unit. The landlord enquired about carpet cleaning but the cleaner estimated a cost of \$195.00 with no guarantee that the urine smell would be removed. The tenant testified that he vacuumed the carpets upon vacating and attributed any smell to leaky plumbing. The landlord rebutted the tenant's statements by stating that there was one leak during the tenancy that did not affect the carpets and that the carpets were dry when they were torn up.

Replace oven – \$ 269.44 (53% of replacement cost)

The landlord testified that the oven was missing pieces and was very dirty. The landlord obtained an estimate of \$120.00 for a technician to service the oven but decided to replace the oven with a new one. The landlord testified the oven was approximately seven years old at the end of the tenancy and was seeking the value use eight years of future use of the oven based on a normal life expectancy of 15 years. The tenant testified that the some parts of the oven worked and other parts did not but the tenant acknowledged that he never reported the issue to the landlord.

Clean blinds -- \$ 75.00

The landlord testified that the metal blinds were cleaned by his wife for three hours as the blinds were very greasy. The landlord has charged \$25.00 per hour based on the rate they normally pay their house cleaners. The tenant acknowledged he did not clean the blinds as he believed the blinds to be cheap and would be replaced by the landlord during renovations.

Repair drywall -- \$500.00

The landlord submitted that he paid a drywaller \$500.00 to repair screw holes, chips, replace drywall in spots and apply skim coats of drywall mud. The landlord is not

charging to repaint the unit in recognition of the long term tenancy. The tenant was of the position that the drywall was not damaged beyond normal wear and tear for a five year tenancy and attributed a patch in the drywall due to a hole made by the landlord's electrician. The tenant was of the position that the landlord would have had to patch dents before painting the unit anyways and the landlord is trying to renovate the residential property at the tenant's expense. The landlord refuted the tenant's suggestion the landlord is trying to renovate the rental unit at the tenant's expense by stating that the rental unit was not to be renovated.

Cleaning -- \$500.00

The landlord testified that his wife spent 20 hours cleaning the rental unit and provided a log of the time spent by his wife cleaning the unit. The tenant acknowledged that he was not a good housekeeper and claimed there was a problem with bugs in the unit.

Dispose of refuse -- \$ 75.00

The landlord testified he had to take refuse left at the rental unit by the tenant to the transfer station and this amount represents the landlord's time, approximately two hours and the dump fee of \$10.00. The tenant was of the position that garbage was included in his monthly rent and that any refuse left behind was damaged by leaking plumbing.

Over holding – \$22.40 (equivalent of 1 day of rent)

Since the tenant was required to vacate June 30, 2009 and did not actually vacate until July 1, 2009 the landlord is charging one day of overholding. The tenant claimed the landlord agreed the tenant could stay until July 1, 2009 since he could not move into his new accommodation until July 1, 2009. The landlord denied granting such permission to the tenant.

Loss of use of rental unit -- \$ 677.60 (equivalent to one month's rent less one day)

The landlord explained that the landlords intended to occupy the rental unit in order to renovate other areas of the residential property but that the landlord could not occupy the rental unit due to the condition it was left by the tenant. The landlord quantified this loss by referencing the monthly rent payable by the tenant, less one day already charged for overholding. The tenant did not agree with the landlord's request for compensation for loss of use of the rental unit.

Repair front door -- \$ 75.00

The landlord testified that the entry door and doorframe were severely chipped and scratched by the tenant. The tenant attributed the scratches to normal wear and tear and inferior paint job of the door. The landlord refuted the tenant's position by testifying the painting issues of the past did not involve the tenant's door and that the same paint is on the landlord's door which has no scratches or chips.



# Dispute Resolution Services

Page: 5

Residential Tenancy Branch  
Ministry of Housing and Social Development

As evidence for the hearing, the landlord provided photographs of the rental unit before the tenant began residing in the rental unit and after the tenant vacated. The landlord also provided copies of invoices for repairs, tenancy agreements, inspection reports and detailed logs of time spent cleaning and repairing the rental unit.

The tenant took issue with the fact that the landlord did not complete inspection reports at the beginning and end of each tenancy agreement; however, the tenant acknowledged that the rental unit was clean and newer when he moved in.

At the end of the hearing, the tenant acknowledged that he adequately conveyed his positions during the hearing that he was not responsible for repairing the rental unit as any repairs were for normal wear and tear and due to the landlord's failure to fulfill the landlord's obligations and respond to repair issues in the rental unit.

## Analysis

At the end of a tenancy, both the landlord and tenant have certain obligations and responsibilities. The tenant must leave the rental unit on the last day of the tenancy by 1:00 p.m., unless the parties agree on a different day and time. The tenant must also leave the rental unit reasonably clean, undamaged except for reasonable wear and tear, and give the landlord all the keys that are in the possession or control of the tenant.

In light of the above, the tenant was required to provide the landlord with both sets of keys on his last day of tenancy. The tenant did not comply with this requirement. Although the tenant stated he informed the landlord he would return the second set of keys to the landlord as soon as possible, I find that promise too vague and the landlord reached a reasonable conclusion that the second set of keys would not be returned in a timely manner. Therefore, I find the landlord entitled to compensation to change the locks since the tenant failed to return both sets of keys to the landlord on the last day of tenancy and I award the landlord the amount claimed of \$82.85.

The tenancy agreement required the tenant to vacate on June 30, 2009. It is not in dispute that the tenant actually vacated July 1, 2009. I do not find the disputed verbal testimony sufficiently satisfies me that the landlord and tenant agreed the tenant could vacate the rental unit after June 30, 2009. Therefore, I find the tenant did overhold the rental unit one day and the landlord is entitled to compensation for that day in the amount claimed of 22.40.

Upon review of all of the photographs, detailed time logs provided by the landlord, and testimony of both parties, I am sufficiently satisfied that the tenant did not leave the

rental unit reasonably clean. After five years of tenancy, it is reasonable to expect the tenant to have steam cleaned the carpets. I find the tenant was also responsible for cleaning the blinds and the stove. However, I do not find the landlord entitled to replacement costs for the carpet and stove. Section 7 of the Act requires that a party that makes a monetary claim against another party, do whatever is reasonable to minimize the damage or loss. In the case of the carpet and stove, the landlord decided to replace the carpet without making an attempt to clean it. The landlord decided to replace the stove without making an attempt to repair it. I hold the tenant responsible for the stove repair as the tenant did not notify the landlord as any repair issues during the tenancy and I find it more likely than not that the tenant damaged the stove and did not report it. Therefore, I award the landlord \$500.00 for the 20 hours spent cleaning the unit, as documented by the landlord's wife in detail, \$75.00 for cleaning the blinds, the estimated cost to clean the carpets of \$195.00 and estimated cost to repair the stove of \$120.00.

The tenancy agreement provided for garbage disposal in the monthly rent; however, I do not find this term would include refuse beyond that normally generated with everyday living activities. I do not find sufficient evidence that the refuse left behind by the tenant was damaged by a leaking pipe. Therefore, I award the landlord \$50.00 for the two hours spent travelling to the transfer station, plus \$10.00 for the dump fee for a total of \$60.00 for refuse disposal.

With respect to the drywall repair charges, I refer to Policy Guideline 1 which provides that a tenant is not ordinarily responsible for repairing nail holes unless there is an excessive number of nail holes or large holes. It also provides that a tenant is responsible for deliberate or negligent damage to walls. The photographs provided by the landlord include photographs of some large holes, likely attributable to the tenant installing shelves. I find the tenant responsible for repairing these holes. The landlord's photographs also depict chips at the corners of walls and a support post. However, upon review of the drywaller's invoice, I note the drywaller merely indicates that he "fixed cracks, holes in basement suite" and I cannot ascertain repairs that are minor in nature, for which the tenant would not be responsible, from major repairs that would be the responsibility of the tenant. Therefore, I award the landlord one-half of the drywall repair costs in the amount of \$250.00.

Upon review of the photographs of the entry door, I find the tenant was negligent in causing the scratches and dents for which the landlord is entitled to compensation. I award the landlord \$75.00 for the landlord's time spent repairing the door and doorframe.





# Dispute Resolution Services

Page: 7

Residential Tenancy Branch  
Ministry of Housing and Social Development

As with all monetary claims, the party making the claim must verify the quantum of the amount being claimed. With respect to loss of use of the rental unit, I found the tenant largely responsible for the poor condition of the rental unit; however, the landlord did not provide sufficient evidence to demonstrate how the loss of use caused the landlord to incur damage or loss. As I heard the landlord intended to use the rental unit for storage or the landlord's own use during renovations, I was not provided evidence that the inability to use the rental unit for these purposes held up renovation progress and caused the landlord financial losses. Therefore, I dismiss this portion of the landlord's claim.

With respect to inspection requirements, the Act requires that the parties inspect the rental unit on the day the tenant is entitled to possess the rental unit, or on another mutually agreed day, and participate in a move-out inspection on or after the day the tenant ceases to occupy the rental unit. Although the parties entered into several tenancy agreements during the time the tenant was entitled to possession of the rental unit, I do not accept the tenant's position that the landlord violated the Act by not inspecting the rental unit and the beginning and end of each tenancy agreement. Rather, I find the landlord was obligated to inspect the unit with the tenant when the tenant first occupied the rental unit and when the tenant ceased to occupy the rental unit.

In light of the above, I find the landlord is entitled to retain the tenant's security deposit and is awarded the cost of the filing fee. The landlord is provided a Monetary Order calculated as follows:

Replace locks	\$ 82.85
Carpet cleaning	195.00
Oven repair	120.00
Blind cleaning	75.00
General cleaning	500.00
Drywall repair	250.00
Overholding – 1 day	22.40
Refuse disposal	60.00
Repair entry door	<u>75.00</u>
Total damages and cleaning awarded	\$ 1,380.25
Plus: filing fee	50.00
Less: security deposit and interest	<u>(310.62)</u>
Monetary Order for landlord	<u>\$ 1,119.63</u>

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an order of that court.



# Dispute Resolution Services

Page: 8

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Conclusion

The landlord was partially successful in this claim and has been authorized to retain the tenant's security deposit plus accrued interest and has been provided a Monetary Order for the balance remaining of \$1,119.63 to serve upon the tenant.

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: November 25, 2009.

---

Dispute Resolution Officer