



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and utilities, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's pet damage and security deposits in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:56 a.m. in order to enable her to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that on June 18, 2011 the tenant provided her with a written notice to end this tenancy by July 14, 2011. The landlord testified that she sent the tenant a copy of her dispute resolution hearing package by registered mail on August 22, 2011. She provided the Canada Post Tracking Number for this mailing and said that this package was not returned to her. I am satisfied that the above documents were served to one another in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, utilities and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's pet damage and security deposits in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This periodic tenancy commenced on January 1, 2011. Monthly rent was set at \$875.00, payable on the first of each month. The landlord said that the tenant was responsible for 25% of the gas and hydro if she was the sole occupant of the rental unit.

The landlord continues to hold the tenant's \$437.50 security deposit paid on December 15, 2010 and the tenant's \$437.50 pet damage deposit paid on February 15, 2011.

The landlord testified that she did not request or conduct a joint move-in condition inspection. She said that the tenant refused to participate in a scheduled joint move-out condition inspection and abandoned the rental unit without leaving keys for the landlord by July 16, 2011. The landlord said that since she believed that the tenant was responsible for rent for the entire month of July 2011, she was uncertain as to whether the tenant was actually planning to vacate the rental unit by the July 14, 2011 date identified on the tenant's written notice to end this tenancy.

The landlord applied for a monetary award of \$1,072.70, which included the following items for unpaid rent, utilities, damage and losses arising out of this tenancy:

<b>Item</b>	<b>Amount</b>
Unpaid July 2011 Rent	\$437.50
Unpaid Utilities	99.61
Cleaning (including carpet cleaning) – 5 hours	200.00
Damage – Estimated Labour for Carpentry – 3 hours @ \$35.00 per hour	105.00
Supplies to Repair Damage to Roof/Entrance	55.17
Repair of Broken Light and Bulbs (Light \$42.55; Bulbs \$33.58 & Labour -1 hr @ \$35.00)	111.13
Replacement of Bathroom Light Bulbs	12.50
Lock Replacement	51.79
<b>Total Monetary Award Requested</b>	<b>\$1,072.70</b>

The landlord testified that the tenant had replaced a shower handle at a cost of \$23.51 which could be credited to the tenant in addition to the tenant's \$875.00 in pet damage and security deposits. However, she noted that the tenant had never provided her with a receipt for this item, and there were questions as to whether the landlord was truly responsible for this item. The landlord also asked for recovery of her \$50.00 filing fee for this application.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order

that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

#### Analysis – Unpaid Rent and Utilities

Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord written notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for July 2011, the tenant would have needed to provide her notice to end this tenancy before June 1, 2011. In this case, I find that the tenant did not comply with the provisions of section 45(1) of the *Act* in order to avoid responsibility for a full payment of rent for July 2011.

There is undisputed evidence that the tenant did not pay \$437.50 of the rent for July 2011, the last month of her periodic tenancy. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord had rented the premises to another tenant as of July 15, 2011. However, when the tenant requested an extension of this tenancy beyond July 14, 2011, the date identified in the tenant's written notice to end this tenancy, the landlord had to ask the new tenant to delay the commencement of the new tenancy agreement for this rental unit until August 1, 2011. The landlord testified that the new tenant commenced her tenancy as of August 1, 2011, and the landlord did not receive any rent from this rental unit for the last half of July 2011. Under these circumstances, I find that the landlord did attempt to the extent that was reasonable to re-rent the premises as of July 15, 2011, by which time the tenant was supposed to have vacated the rental unit. As such, I am satisfied that the landlord has discharged her duty under section 7(2) of the *Act* to minimize the tenant's loss.

For these reasons, I find that the landlord is entitled to a monetary award in the amount of \$437.50 for unpaid rent for July 2011.

The landlord did not provide written documentation to support her application for a monetary award of \$99.61 for unpaid utilities. She did not provide a utility bill, noting

that utilities are actually paid by her other tenant in the building. She requested this payment so that she could reimburse her other tenant for the \$99.61 portion of the other tenant's utility bill. I dismiss the landlord's application for unpaid utilities without leave to reapply as I am not satisfied that the landlord has demonstrated to the extent necessary that she has incurred a loss from the tenant's failure to pay this amount for utilities.

Analysis – Damage and Losses Arising out of this Tenancy

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful.

No joint move-in condition inspection was conducted and no report was issued by the landlord. The failure to do so can extinguish the landlord's right to claim against a security deposit. Although the tenant abandoned the rental unit at the end of this tenancy without meeting with the landlord to conduct a joint move-out condition inspection, the landlord did not prepare a move-out condition report of her own inspection of the premises after the tenant vacated the premises.

I find that the landlord did not comply with all of the provisions regarding a move-in condition inspection. However, section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." Based on the undisputed oral, written and photographic evidence of the landlord, I find on a balance of probabilities that the tenant did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean and undamaged" as some cleaning and repairs were required by the landlord after the tenant vacated the rental unit.

While the landlord has demonstrated entitlement to a monetary award, she provided few bills, invoices or receipts to document losses that she has actually incurred. She said that some of the work remains in progress (e.g., the carpentry work to repair the small cover over the entrance). She said that her husband has been attempting to conduct some of the repairs. Since a new tenant moved into the rental unit shortly after the tenancy ended, any ongoing work that is still being conducted would not seem to have hindered her from renting the premises to a new tenant.

The landlord testified that she cleaned the rental unit herself. She asked for reimbursement of \$200.00 for cleaning, an amount which she noted was less than the

estimate she entered into written evidence for the cost for cleaning and carpet cleaning from a cleaning service.

I find that the landlord's application for reimbursement of the installation of new locks is an item that a landlord is required to perform at the end of any tenancy at the landlord's cost.

Based on the undisputed evidence submitted by the landlord, I find that the landlord is entitled to a monetary award for general cleaning and repairs that would appear to have become necessary as a result of this tenancy. I issue a monetary award in the landlord's favour in the amount of \$250.00 to compensate her for these items. I dismiss the remainder of the landlord's claim for damage and losses arising out of this tenancy without leave to reapply due to the absence of any receipts from the landlord and the landlord's oral testimony that not all of the work requested in her application for dispute resolution has been done. I find that her failure to document her actual losses arising out of this tenancy prevents her from a monetary award for damages and losses in excess of the \$250.00 awarded for general cleaning and repairs.

In the absence of any receipt for the shower handle or any evidence from the tenant, I find that the landlord is not responsible for replacing the tenant for her purchase of a shower handle.

Since the landlord has been successful in her application, I allow her to recover her \$50.00 filing fee for her application from the tenant.

I allow the landlord to retain the tenant's security deposit and portions of the tenant's pet damage deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

### Conclusion

I issue a monetary Order in the tenant's favour in the following terms which allows the landlord to recover unpaid rent, damage and losses arising out of this tenancy and to recover her filing fee for this application from the tenant's pet damage and security deposits.

<b>Item</b>	<b>Amount</b>
Unpaid Portion of July 2011 Rent	\$437.50
General Cleaning and Repairs	250.00
Less Pet Damage and Security Deposits	-875.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>(\$137.50)</b>

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: November 18, 2011

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Residential Tenancy Branch