



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNR, MND, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for loss of rent, for compensation under the Act and the tenancy agreement, for damage and cleaning of the rental unit, and to recover the filing fee for the Application.

Only the Landlord and his Agent appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified he served the Tenant with the Notice of Hearing and Application documents by registered mail, sent on October 31, 2013. The Landlord testified he sent this mail to the address where the Tenant currently lives, as he was informed by a third party that this is where the Tenant now lives, and the Landlord testified he has seen the Tenant, her vehicle and the Tenant's family at the address the mail was sent to. The Tenant did not accept or neglected to accept the registered mail and it was returned to the Landlord. Under the Act, the Tenant was deemed served five days after mailing. I note that failure or neglect to accept registered mail is not a ground for review. I find the Tenant was duly served under the Act.

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 monetary compensation from the Tenant?

### Background and Evidence

This tenancy began in or about January of 2003. No security deposit was paid by the Tenant.

In September of 2011, the Landlord obtained an order of possession and a monetary order for unpaid rents to the end of September 2011, as a result of an earlier Application for Dispute Resolution.

The Landlord had to engage the service of a Bailiff to enforce the order of possession and have the Tenant removed from the rental unit. The Landlord did not have full and vacate possession of the rental unit until November 4, 2011. As the Landlord filed his Application on October 28, 2013, I find the Landlord has filed this Application within the two year time limit imposed under the legislation. In other words, the Landlord made his Application against the Tenant within the required time limit.

The Landlord now claims for the costs incurred to clean and repair the rental unit due to the condition it was left in by the Tenant, and for a loss of rent during the time the Tenant over held in the rental unit and for a loss of rent due to the condition the rental unit was left in at the end of the tenancy.

The Landlord claims as follows:

a.	Loss of rent for October, November and December 2011 (3 x \$725.00)	2,175.00
b.	Cleaning services	345.00
c.	Bailiffs	370.72
d.	Bedroom blinds	354.86
e.	Sub floor, oak trim	136.36
f.	Tiles, grout, sealer	183.16
g.	Dump fees, fuel, labour	216.08
h.	Carpet replacement	169.99
i.	Personal labour	500.00
j.	Flooring repairs	448.00
k.	Filing fee	50.00
	<b>Total claimed</b>	<b>\$4,949.17</b>

The Landlord testified that at the rental unit had been completely refurbished at the start of the tenancy. The Landlord was unaware that a condition inspection report was required to be done at the beginning and end of the tenancy. The Landlord testified he did not have a written tenancy agreement with the Tenant. It was explained to the Landlord during the hearing that although the standard terms of the Act would still apply to an oral tenancy, it is now required that written tenancy agreements be made. Nonetheless, the Act does acknowledge and accept that a tenancy agreement may be made orally.

The Landlord explained the rental unit was completely refurbished and in good shape when the Tenant moved in.

The Landlord testified that when the Tenant vacated the rental unit was in "shambles" and was so filthy no one would have rented it in the condition it was in.

The Agent for the Landlord concurred with what the Landlord was saying. The Agent testified that the property was in no condition to present to prospective renters after the Tenant had vacated. The Agent testified that she saw the rental unit immediately after the Tenant vacated and the repairs claimed for by the Landlord were required and were done by the Landlord.

The Landlord testified that after the Tenant was removed by the Bailiff in November, it took until December to complete all the cleaning and repairs.

The Landlord testified he had to hire someone to clean all the walls in the rental unit as this had not been done by the Tenant before she left. He testified that in order to paint the rental unit they had to wash the walls, as it appeared these were never done by the Tenant during the tenancy. In some instances, they had to scrape the walls clean to get to a fresh surface so the paint would adhere. They also had to scrape paint overruns made by the Tenant where she had painted portions of the rental unit with a black paint.

The cleaner hired by the Landlord submitted an invoice that reflects the above, and explains that the floors had to be stripped clean, the inside of the fridge and stove had to be cleaned, there was mold in the bathroom that had to be removed, and a large amount of bird feces had to be scrapped off a heating unit. The Landlord claims \$345.00 for this and has supplied an invoice in this amount.

As described above, the Landlord had to hire a Bailiff to remove the Tenant. The Landlord claims \$370.72 for this and has included an invoice from a Bailiff's service.

The Landlord claims the custom draperies from one of the bedrooms, are missing and the Tenant had no permission or authority to remove these. The Landlord claims the curtain were brand new when the Tenant moved in; however, the Landlord has replaced these with venetian blinds and claims \$354.86 for this, and has provided a receipt in this amount.

The Landlord claims \$136.36 to repair oak floors damaged by water and wood trim which were damaged by the Tenant painting with black paint. The Landlord testified it was not possible to remove all the black paint from the trim and it had to be replaced.

The Landlord testified that the Tenant had caused a flood in the laundry room which he was never informed of. The water caused the tile floor to heave and damaged the sub floor. The Landlord had to replace the subfloor, re-tile and grout the floor, and claims \$183.16 for this.

The Landlord testified he found piles of junk and debris left at the rental unit by the Tenant. For example he said there were bundles of unopened newspapers, an engine block, bicycles and other junk left behind. The Landlord had to make two trips to the

dump and claims for labour, fuel and dump fees in the amount of \$216.08, and receipts have been provided.

The Landlord testified that the Tenant had two birdcages in the rental unit and there were bird feces below these cages in disgusting piles. The Landlord had to replace two carpets due to this and claims \$169.99 for the carpet only, as he installed them himself.

The Landlord claims \$448.00 for repairs to oak, parquet flooring in the rental unit. The Landlord testified that there had been a water flood from a bathroom into a bedroom, which caused the floor to lift. The Landlord also testified that the Tenant had a mobile dishwashing machine that leaked water onto the floor and caused the parquet floors to lift.

The Landlord claims that he also had to make many repairs to the walls in the rental unit which had over 160 screw holes in them. The Landlord submitted photos which show these multiple holes, as well as larger holes punched or kicked into the drywall in certain areas. Along with these repairs the Landlord many hours of work in the rental unit. The Landlord claims \$500.00 for his labour at \$15.00 per hour for approximately 34 hours of work. The Landlord testified he did much more than this, but is only claiming for the \$500.00

### 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.

In this instance, the burden of proof is on the Landlord 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 Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did everything possible to minimize the damage or losses that were incurred.

Based on all of the above, the undisputed evidence and testimony, and on a balance of probabilities, I find as follows.

I accept the testimony of the Landlord and the Agent as to these damages and repairs. The Landlord's testimony was sincere, straightforward and he did not exaggerate his claims or losses. I found the Landlord's testimony to have the ring of truth to it and it was honest and compelling. Likewise, I found the Agent's corroborating testimony to be forthright and compelling, again, with the ring of truth to it all.

I find the Tenant did not clean the unit or make necessary repairs and this is a breach of section 37 of the Act. The Tenant was required to leave the rental unit reasonably clean and undamaged, save for reasonable wear and tear. In this instance, I find that the Tenant damaged the rental unit well beyond reasonable wear and tear. I further find the Tenant failed to clean the rental unit prior to vacating it.

I find this breach of the Act has caused losses to the Landlord.

Despite being ordered to vacate the rental unit in September, I find the Tenant did not vacate the rental unit until November and therefore, the Landlord suffered a loss of rent for October and November.

Furthermore, I find that due to the condition the rental unit was left in by the Tenant, the Landlord has suffered a loss of rent for December. Therefore, I allow the Landlord's claims for rent in the amount of \$2,175.00

Section 7 of the Act states:

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Reproduced as written.]

Here I find the Landlord mitigated his losses as required. He had to engage the services of a Bailiff to remove the Tenant, as required by statute. He hired certain companies and persons to do work at reasonable hourly rates and amounts. He did much of the work himself and charged a reasonable rate for this.

Therefore, I allow the claims for cleaning of \$345.00, the Bailiff of \$370.72, the window blinds of \$354.86, the repairs to the floors and trims of \$136.36, \$183.16, \$448.00, the dump fees, fuel costs, and labour of \$216.08, and for the replacement of the carpet of \$169.99. I also allow the Landlord his labour at \$500.00

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

Based on all of the above, I find that the Landlord has established a total monetary claim of **\$4,949.17** comprised of the above described amounts and the \$50.00 fee paid for this application.

I grant the Landlord an order under section 67 for the balance due of **\$4,949.17**

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 27, 2014

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Residential Tenancy Branch

