



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for damage to the unit, site or property and for recovery of the filing fee for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and called one witness who gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of this hearing each individually by registered mail on March 19, 2015, no one for the tenants attended the hearing. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participants who joined the call were the landlord and the landlord's witness. The landlord testified that the tenants were served on that date and in that manner and has provided a copy of a Canada Post cash register receipt bearing that date as well as 2 Registered Domestic Customer receipts addressed to each of the tenants, and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

The testimony of the landlord and the landlord's witness and all evidentiary material provided by the landlord is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on August 1, 2011 but does not know when the tenant moved out. The rental unit was advertised to re-rent somewhere around January 1, 2015 and was re-rented for January 15, 2015.

No written tenancy agreement was completed, however the landlord testified that rent in the amount of \$850.00 per month was payable in advance on the 1<sup>st</sup> day of each month. The landlord did not collect a security deposit or a pet damage deposit from the tenant.

The landlord further testified that the tenants are in arrears of rent the sum of \$1,700.00 but the landlord was awarded that amount at dispute resolution on December 15, 2014.

No move-in condition inspection report was completed at the beginning of the tenancy, but the landlord testified that the witness was at the rental unit prior to the tenancy, who can also attest to its condition at the commencement of the tenancy. The landlord has provided a copy of a monetary order worksheet, and claims an additional \$50.00 for unpaid rent for October, 2014 as well as the cost of photocopies, photographs, faxes and costs to prepare for this hearing, \$22.68 for registered mail to serve the tenants, and the following for damages:

- \$114.69 to replace a broken heater which the landlord bought for the tenants in case rooms were chilly instead of turning up the heat. Busted pieces remained at end of tenancy and the landlord replaced it with one similar and has provided a receipt;
- \$22.39 for disinfectant to get rid of cat smell in bedroom; a receipt has been provided;
- \$140.00 to replace a broken screen door and the landlord testified that the tenants' dog or cat had gone right through it; a receipt has been provided;
- \$150.00 for suite cleaning and the landlord testified that the whole unit had to be cleaned from top to bottom – photographs and a receipt for that amount have been provided;
- \$180.00 for the landlord's time cleaning and the landlord testified that he claims the amount per hour charged by the cleaning company, and the landlord spent 12 hours at \$15.00 per hour;
- \$1,695.00 for repairs and painting and the landlord testified that the landlord's witness who works for the landlord completing repairs and maintenance has provided a receipt;
- \$145.44 for new curtains in the living room which were in the rental unit at the beginning of the tenancy and missing at end of tenancy; receipts have been provided;
- \$85.16 for cleaning and repair supplies and a receipt has been provided;
- \$31.27 for kitchen paint and repair supplies; receipt provided;
- \$9.00 for 4 keys cut because the tenant failed to leave any and a receipt has been provided;
- \$18.45 for more cleaning supplies to clean floor tile in the kitchen, hall and bathroom;
- \$21.79 for more paint and rollers;

- \$49.45 for patio door rollers and the landlord testified that it was jamming at the end of the tenancy because rollers were damaged and rather than replacing the door, the landlord had it repaired; the door is not the same as the screen door mentioned above;
- \$12.64 for Drains and the landlord testified that the kitchen sinks were so plugged they had to be cleared out, snaked, and the landlord found that the tenants had taken the drain pipe apart and put it back together incorrectly and put a bucket under it and left it that way;
- \$13.43 is for the new pipe;
- \$28.03 for the cost of assorted repairs;
- \$154.97 for more paint;
- \$106.55 for putty and more paint; and
- \$95.40 for more paint for the kitchen and bathroom.

Receipts for all items purchased have been provided.

The landlord further testified that the rental unit had been painted and everything was clean and well maintained prior to this tenancy. The landlord's witness had completed all of the work, and the tenants never complained about anything, and were even impressed. Photographs at the end of the tenancy have been provided and they are dated December 27, 2014.

**The landlord's witness** testified that he has worked for the landlord completing maintenance, cleaning and repairs for about 9 years looking after 5 units and the landlord's own residence. His duties include re-doing anything needed between tenancies including checking appliances to ensure they work and are clean.

The witness does not know when the tenants move in or when they moved out, but the witness lives right above the rental unit. The witness was present at move-in and testified that the rental unit was clean and the witness had repainted and filled any holes, and repaired any damages prior to the commencement of the tenancy. The appliances were new or nearly new. At move-out, nothing was cleaned, holes remained in walls, and garbage was left all over the place as well as unwanted debris. One room smelled badly of cat urine and the witness obtained a chemical from a cleaning supply place and had to go over it several times. The witness had to clean, repaint, fill holes and get rid of garbage.

The witness also testified that he purchased an oil heater for the rental unit, which was left broken at the end of the tenancy. Also, castors were broken and a remote control was missing. The patio screen door was ripped and the frame was broken and bent so the witness purchased a new one for the landlord. The witness also put in new castors or rollers on the bottom of the patio door because they were broken.

The living room of the rental unit had curtains at the beginning of the tenancy but had been removed at the end of the tenancy by the tenants.

The kitchen drain was plugged solid and the witness ran a snake through it, but had to take it apart finding pieces missing. It was apparent that the tenants tried to do something.

No keys, including a mail key, had been returned by the tenants.

The witness testified that at the beginning of the tenancy the rental unit was clean and at the end of the tenancy it was a pig-sty and required repainting throughout. The only thing not repainted at the end of the tenancy was the ceiling.

### Analysis

The landlord has provided several Monetary Order Worksheets which are totalled and accompanied by appropriate receipts. The first includes claims for unpaid rent for October, November and December, 2014, which have been dealt with in the December 15, 2014 hearing and cannot be reconsidered.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce the damage or loss suffered.

Also, the *Act* states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy, however in this case, none exist. I consider the independent testimony of the landlord and the witness, and I find both to be credible. I also consider the photographs which I find to be consistent to the testimony, and I find that the tenants did not leave the rental unit reasonably clean and undamaged except for normal wear and tear. I am not satisfied that the landlord has established the claims of \$180.00 for the landlord's time cleaning the rental unit or \$28.03 for the cost of assorted repairs. I find it excessive to claim cleaning by a cleaning company, by the landlord and by the witness, and I am not satisfied that assorted repairs were to make repairs due to damages caused by the tenants. I find that the landlord has established a claim for the balance of the damages totalling \$2,865.63.

The *Act* provides for recovery of the filing fee but not costs associated with preparation for a hearing or service costs, and the landlord's claim for the cost of photocopies, photographs, faxes, and registered mail to serve the tenants is therefore dismissed.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,915.63.

This order is final and binding and may be enforced.

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: September 03, 2015

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Residential Tenancy Branch

