



# 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 amended application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, 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 tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1403 in order to enable the tenants to connect with this teleconference hearing scheduled for 1330. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

### Preliminary Issue – Service of Dispute Resolution Package

The landlord testified that she attempted to serve the tenants by mail to their business address, but that mail was undeliverable. The landlord testified that she personally served the tenant GL (the tenant) at his new business address with the dispute resolution package on or before 26 August 2015. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

Service of a dispute resolution package is required for each respondent. In this case, the landlord has only been successful in serving the tenant. As the landlord has been unable to successfully serve the tenant WS, the landlord's claim against the tenant WS is dismissed with leave to reapply. The landlord was informed of this at the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, damage and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit 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

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 June 2015. The parties entered into a fixed-term tenancy agreement on 8 May 2015. The fixed-term tenancy was for an initial term of one year.

On or about 10 July 2015, the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities as the tenants had failed to pay rent due 1 July 2016. The tenants vacated the rental unit on or before 27 July 2015. The landlord testified that she has not received rent for July.

The landlord testified that extensive repairs and cleaning were required after the tenants vacated. The landlord did not advertise the rental unit for rent as available until mid-August because of the required remediation. The landlord found new tenants for a tenancy beginning 1 September 2015. The landlord testified that she experienced a rent loss for August.

The landlord testified that she personally cleaned the rental unit prior to the tenants' occupancy. The landlord testified that the rental unit was very clean at the beginning of the tenancy. The landlord testified that the rental unit required extensive cleaning at the end of the tenancy. Also, the landlord testified that she had to remove garbage (including furnishings) from the rental unit that the tenants had abandoned. The landlord testified that the rental unit took twenty hours to clean. The landlord provided me with an invoice for \$400.00 for cleaning and \$100.00 for garbage removal.

The landlord testified that the hood range fan was operating at the beginning of the tenancy. The landlord testified that the tenants replaced a bulb in the hood range with an outdoor flood light. The landlord testified that she believe that the installation of this

improper bulb caused the hood range fan to malfunction. The landlord testified that when the switch for the hood range was turned on, nothing would happen. The landlord testified that it was necessary to replace the hood range. The landlord provided me with an invoice for the cost of replacing the hood range in the amount of \$310.00. This amount included \$183.88 in materials and \$127.12 for labour.

The landlord testified that it was necessary to replace all of the burner drip bowls. The landlord testified that the cleaner attempted to clean the bowls but she was unsuccessful. The landlord testified that one of the stove elements was physically damaged and would not work. The landlord testified that the oven and range were new in 2010. The landlord testified that the burner drip bowls and elements were both functional and clean at the beginning of the tenancy. The landlord provided me a receipt for replacement of the one element and four burner drip bowls totalling \$85.07.

The landlord testified that the tenants left the rental unit with a damaged window screen. The screen was removed from the window frame and on the ground outside. The landlord testified that the screen was approximately two-years old. The landlord testified that she paid \$196.31 to a third-party contractor for the repair. I was provided with an invoice.

The landlord testified that the tenants did not return any of the keys to the rental unit. The landlord testified that as the tenant failed to return the keys she felt she had no choice but to replace the locks to the front door in order to secure the rental unit. The landlord testified that she paid \$464.62 to a third-party contractor to replace the lock. I was provided with an invoice.

The landlord provided photographs which corroborate the state of the rental unit.

The landlord claims \$500.00 as compensation for an early end to the lease. The landlord testified that this is her best estimate and is based on the cost of hiring a property manager to re-rent the rental unit. The landlord submits that she is entitled to be compensated for her time in finding a new tenant including answering phones and conducting showings. The landlord testified that she expected the tenants to stay in the rental unit for the fixed term of one year.

The tenant did not attend to provide any testimony. The tenant did not submit any documentary evidence.

The landlord claims for \$4,056.00:

<b>Item</b>	<b>Amount</b>
Unpaid July Rent	\$1,000.00
Rental Loss August	1,000.00
Cleaning Rental Unit	500.00
Stove Range Hood	310.00
Stove Repairs	85.07
Screen Window	196.31
Change Locks	464.62
Compensation for Breach of Fixed-Term	500.00
<b>Total Monetary Order Sought</b>	<b>\$4,056.00</b>

### Analysis

In a monetary claim, such as that of the landlord, a claimant must show a breach of the Act or tenancy agreement and meet the conditions set out in section 67 and 7 of the Act.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, regulations or a tenancy agreement, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

*July Rent: \$1,000.00*

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

Under the tenancy agreement rent in the amount of \$1,000.00 was due on 1 July 2015. On the basis of the sworn and uncontested evidence of the landlord, I find that the tenant failed to pay rent due 1 July 2015 in the amount of \$1,000.00. There is no evidence before me that indicates that the tenant was entitled to withhold any amount from his rent. The tenant has breached the tenancy agreement and in turn caused the landlord loss in the amount of rent. The landlord could not mitigate her loss as the

tenant remained in occupation of the rental unit until 27 July 2015. On this basis, the landlord has proven her entitlement to \$1,000.00 for July's rent.

*August Rent Loss: \$1,000.00*

The landlord claims a rental loss for August. *Residential Tenancy Policy Guideline*, "3. Claims for Rent and Damages for Loss of Rent" provides guidance in determining damages in an application such as the landlord's:

These principles apply to residential tenancies and to cases where the landlord has elected to end a tenancy as a result of fundamental breaches by the tenant of the *Act* or tenancy agreement. ...[A]s a general rule non-payment of rent is considered to be a fundamental breach.

If the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the notice to end the tenancy agreement is given to the tenant. The filing of a claim for damages for loss of rent and service of the claim upon the tenant *while the tenant remains in possession of the premises* is sufficient notice. ...

On the evidence before me, I find that the tenant fundamentally breached the tenancy agreement by failing to pay rent due 1 July 2015. I find that the landlord's amended application dated 26 August 2015 provides the tenant with sufficient notice that the landlord has claimed for August's rent loss as a result of the tenant's breach of the fixed-term tenancy agreement.

The landlord has testified that the rental unit was not rerented for August. I find that the landlord has established a rental loss for August in the amount of \$1,000.00. This loss was the result of the tenant breaching his fixed-term tenancy agreement. The landlord testified she reposted the rental unit to an online site as soon as the rental unit was remediated. On the basis of the landlord's sworn and uncontested testimony, I find that the landlord has proven she has mitigated her loss. As such, the landlord is entitled to the full amount of its proven loss: \$1,000.00.

*Cleaning and Garbage: \$500.00*

Subsection 37(2) of the *Act* specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and

tear. *Residential Tenancy Policy Guideline*, “1. Landlord & Tenant – Responsibility for Residential Premises” (Guideline 1) states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. ...

Guideline 1 sets out the responsibility for garbage removal from a rental unit:

Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

On the basis of the sworn and uncontested testimony of the landlord, I find that the tenant failed to leave the rental unit in a “reasonably clean” condition by failing to perform basic cleaning including removing garbage from the rental unit. The landlord’s uncontested evidence is that it cost \$500.00 to return the rental unit to a reasonably clean condition. I find that the landlord has proven the amount of her loss. On its face there is nothing unreasonable about this cost and the tenant did not attend to provide any evidence to the contrary. On this basis, I find that the landlord sufficiently mitigated her loss. I find that the landlord is entitled to \$500.00, the full amount of her cleaning costs.

*Range Hood, Element and Stove Drip Bowls: \$263.38*

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains.

The landlord claims for the cost of replacing the range hood. The tenant ought to have known that installing an improper lightbulb may lead to damage. On the basis of the sworn and uncontested evidence of the landlord, I find that it is more likely than not that the installation of the incorrect light bulb into the stove range hood caused the damage to it. As the tenant caused the damage to the stove hood range through his actions, he is liable for the cost of repairs pursuant to subsection 32(3) of the Act.

The landlord claims for the cost of replacing one element and the burner drip bowls. The element shows damage that the landlord testified was not present at the beginning of the tenancy. The landlord testified that the burner drip bowls were too dirty to clean. On the basis of the uncontested evidence of the landlord, I find that it is more likely than not that the tenant caused this damage through his action or neglect. As the tenant

caused this damage he is liable for the cost of repairs pursuant to subsection 32(3) of the Act.

The landlord provided a receipt indicating the cost of the repairs were \$310.00 and \$85.07. *Residential Tenancy Policy Guideline* “40. Useful Life of Building Elements” (Guideline 40) provides me with guidance in determining damage to capital property. The useful life of a stove is fifteen years. On the basis that a hood range generally accompanies a stove, I find that fifteen years is a good estimate of the life of the stove hood range. The landlord testified that the stove was approximately five-years old. The purpose of damage is to return the claimant to his or her original position. As the value of the stove had depreciated by one third, the tenant is responsible for two thirds of the cost of repair, that is, \$263.38 (\$206.67 and \$56.71).

*Window Screen: \$143.96*

The landlord claims for the cost of replacing the window screen. The landlord provided me with a photograph that shows that the screen was displaced from the frame. I accept the landlord's uncontested evidence that the screen was broken. The landlord testified that the screen was two-years old. On the basis that the screen was relatively new, I find that it is more likely than not that to sustain this damage it must have been caused by the tenant's actions. Pursuant to subsection 32(3), the tenant is liable for the cost of this repair.

The landlord provided a receipt indicating the cost of the repair was \$196.31. Pursuant to Guideline 40, the useful life of a window is fifteen years. I find that the nature of the window screen is sufficiently analogous to use the life of a window as a proxy. In particular, it appears that it is not the screen itself (the more delicate part of the screen) that is damaged, but rather that the frame of the screen is broken. The landlord testified that the window screen was approximately two-years old. As the value of the window screen had depreciated by two fifteenths, the tenant is responsible for thirteen fifteenths of the cost of repair, that is, \$143.96.

*Locks: \$464.62*

In the ordinary course a tenant would not be responsible for changing the locks to a rental unit—generally this is a cost of business borne by the landlord (see section 25 of the Act). However, the tenant is also responsible for returning all keys to the landlord at the end of the tenancy (see Guideline 1). As a result of the tenant's failure to return all the keys, the landlord was justified in concluding that the tenant retained the ability to access the rental unit. By retaining means to access the rental unit the tenant caused the landlord to incur the cost of changing the locks. The landlord has provided a receipt showing that the cost of rekeying the lock was \$464.62. I find that the landlord has proven the amount of her loss.

*Compensation for Breach of Fixed-Term Tenancy: \$0.00*

The landlord claimed for the costs associated with finding new tenants as a result of the breach of the fixed-term tenancy. The landlord did not provide me with any receipts for the cost of advertising or any time log for the effort she or her agents expended in securing the new tenancy. On this basis, the landlord failed to show what if any costs she incurred for this breach. As the landlord has failed to establish the quantum of her loss, she is not entitled to recover.

*Security Deposit: (\$500.00)*

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

*Filing Fee: \$50.00*

As the landlord has been successful in this application, she is entitled to recover the cost of the filing fee for this application.

### Conclusion

The landlord's claim against the tenant WS is dismissed with leave to reapply.

I issue a monetary order in the landlord's favour against GL in the amount of \$2,921.96 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid July Rent	\$1,000.00
August Rent Loss	1,000.00
Cleaning	500.00
Range Hood	206.67
Element and Stove Drip Bowls	56.71
Window Screen	143.96
Locks	464.62
Offset Security Deposit Amount	-500.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$2,921.96</b>

The landlord is provided with this order in the above terms and the tenant GL must be served with this order as soon as possible. Should the tenant GL fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and 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 subsection 9.1(1) of the Act.

Dated: February 02, 2016

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Residential Tenancy Branch

