



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord: MNR MNSD FF  
For the tenants: MNDC

### Introduction

This hearing dealt with cross-applications for Dispute Resolution by both parties under the *Residential Tenancy Act* (the “*Act*”). The landlord has requested a monetary order for damages to the unit, site or property, to retain all or part of the security deposit and to recover the cost of the filing fee. The tenants have requested a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

On April 11, 2017 the hearing commenced and after 58 minutes into the hearing, it was clear that an adjournment was necessary due to service issues related to documentary evidence. An Interim Decision dated April 12, 2017 was issued which should be read in conjunction with this decision. On September 12, 2017, the hearing was reconvened and the parties confirmed that they both had the documentary evidence from the other party and had the opportunity to review that evidence.

### Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants’ security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on January 1, 2012. The parties disputed the date the tenancy ended. The landlord testified that the tenants vacated on July 1, 2016 while the tenants testified that they vacated on June 30, 2016. Monthly rent of \$750.00 was due on the first day of each month and the tenants paid a security deposit of \$375.00 at the start of the tenancy which the landlord

Landlord's claim

The landlord has claimed a total amount of \$2,576.00 which is comprised as follows and while it totals \$2,576.11 I find the landlord is limited to the total amount as claimed of \$2,576.00:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Fridge damage	\$161.58
2. Exterior living room window damage	\$560.00
3. Photos	\$63.00
4. Kitchen cupboard drawers and door	\$381.53
5. Exterior door entrance	\$125.00
6. Cleaning	\$320.00
7. Replacement of china cabinet	\$105.00
8. Removal of contaminated dirt	\$225.00
9. Metal debris	\$310.00
10. Misc. debris	\$225.00
11. Bathroom ceiling repair	\$100.00
<b>TOTAL</b>	<b>\$2,576.00</b>

Regarding item 1 of the landlord's claim the landlord has claimed for \$161.58 for the cost to repair a damaged fridge door handle which the tenants confirmed during the hearing was damaged during the tenancy. The tenants also confirmed that the inner door racks were also damaged during the tenancy. While the landlord was unsure of the exact age of the fridge, the receipt submitted in evidence supports the amount being claimed of \$161.58. The tenants stated that the fridge was older and the tenants could not fix it. The tenants stated that the fridge was left clean and that there was only "fair wear and tear" and did not agree to this portion of the landlord's monetary claim.

Both parties confirmed that there was no move in or move out condition inspection report completed at the start and end of the tenancy. As a result, I will deal with lack of a condition inspection report later in this decision.

Regarding item 2, the landlord has claimed \$560.00 for the cost of an exterior living room window. The landlord testified that the tenants removed the window and did not re-install it properly which resulted in a storm blowing the window out. The landlord confirmed that he did not submit supporting photographic evidence for this portion of his claim. The tenants stated that they did not damage or touch the window and that they do not agree with this portion of the landlord's claim.

Regarding item 3, the landlord has claimed \$63.00 for the cost to print out colour photos for the purposes of the dispute resolution hearing which was dismissed during the hearing as the landlord was advised that there was no remedy for such costs under the *Act*.

Regarding item 4, the landlord has claimed \$381.53 for parts and labour to repair the kitchen cupboards, drawers and door. The landlord referred to several colour photos in evidence and stated that the tenants damaged the cupboards, drawers and door beyond reasonable wear and tear. The tenants claim that during normal wear and tear portions "fell off" and that the kitchen was old and worn out. The landlord did not supply a receipt in evidence for the labour but did supply two receipts for parts in the amounts of \$38.88 and \$2.65. The landlord stated that the cabinets were about twelve years old. The tenants acknowledged that the parts that fell off occurred during the tenancy.

Regarding item 5, the landlord has claimed \$125.00 for the cost of two exterior door knobs. The landlord submitted a receipt for \$19.96 but could not substantiate how he came to the amount of \$125.00 for this portion of his claim. The tenants did not agree with this portion of the landlord's claim.

Regarding item 6, the landlord has claimed \$320.00 for 14 hours of cleaning comprised of two people cleaning for 7 hours at \$22.86 per hour and that the landlord rounded off to the amount of \$320.00 for cleaning costs. The tenants confirmed that they did not submit any photographic evidence to support that they cleaned the rental unit as their "phone was destroyed". The landlord's photos were taken July 1, 2016 according to the landlord. The tenants stated that the garbage shown in the photos was there when they moved in however did not have evidence to support their claim. The landlord testified that a large air conditioning ("A/C") unit was left upstairs which was very heavy and had to be moved outside and was not something that was supplied by the landlord but was

left in the rental unit not working. The tenants denied that it was their A/C unit. The landlord referred to other photos which showed items throughout the rental unit at the end of the tenancy. Some of the items shown at the end of tenancy include a black metal futon frame, an A/C unit, a bike, garbage bags, boxes, window screens and metal debris.

Regarding item 7, the landlord has claimed \$105.00 for the replacement of a china cabinet and a free standing unit in the rental unit. The landlord referred to a photo that they claim shows that a shelf was missing and was removed from the rental unit. The tenants denied that the free standing shelf belonged to the landlord. The landlords confirmed that they did not submit a before photo to support that there was a free standing unit in the rental unit at the start of the tenancy. The landlord also affirmed that the amount of \$105.00 was chosen at random and was not based on the specific cost of the items claimed for this item. The tenants testified that the free standing unit belonged to their daughter and that they removed it when they vacated and that a shelf above the toilet was never in the rental unit during the tenancy as claimed by the landlord. The landlord also referred to a photo of a china cabinet with a door broken off that the landlord stated was damaged by the tenants. The tenants denied damaging the china cabinet and indicated that the china cabinet was in poor condition at the start of the tenancy.

Regarding item 8, the landlord has claimed \$225.00 to remove what the landlord describes as "contaminated dirt" due to the tenant's growing equipment that had chemicals in it including an unknown white substance. The tenants stated that the white particles in the dirt shown in the photos was vermiculite which is found in most potting soils and that the dirt was left over potting soils that was disposed of on the grounds of the property. The landlord testified that he used his own truck to transport the soil from the rental property to their other property in a different town and that the \$225.00 represents his labour at \$25.00 per hour multiplied by five hours plus \$100.00 for diesel for his truck. The landlord affirmed that it is a 54 mile trip one way between the rental property and their other property where the soil was dumped. The tenants responded to this portion of the landlord's claim by stating that the tenants had been growing their own vegetables in pots and that the potting soil was not contaminated; it was potting soil with vermiculite in it and that it came from a bag from a store that sold flowers.

Regarding item 9, the landlord has claimed \$310.00 to properly dispose of the metal debris left on the rental property by the tenants. The landlord states that the tenants were burning mattresses and a sofa bed on the property which is supported by the photos submitted in evidence which shows mattress springs and a sofa bed frame charred from fire damage. The landlord and his spouse stated that the fire occurred

twelve feet from the rental home and that the fire department attended and directed the tenants to put out the fire as it was too close to the home. The tenants stated that they were directed by the landlords just to “burn it” when it came items on the rental property. The landlord did not agree with the tenants and stated that they would not be permitted to keep all of the items outside as the city would not allow it and that the landlords were not responsible for the tenants’ bike, futon, A/C unit and other personal items left behind. The landlord stated that the amount of \$310.00 was comprised of just over 8 hours at \$25.00 per hour plus \$100.00 in fuel. The tenants indicate that everything being referred to by the landlord was on the property when they moved in.

Regarding item 10, the landlord has claimed \$225.00 for the cost associated with removing the remainder of the debris on the rental property including large laminate wood beams. As the landlord failed to provide a breakdown of how he arrived at the amount of \$225.00 during the hearing, this item is dismissed due to insufficient evidence of the cost being claimed against the tenants.

Regarding item 11, the landlord has claimed \$100.00 to repair water damage to the bathroom ceiling which was supported by photographic evidence submitted by the landlords. The landlord testified that to wash and paint was 3 hours at \$25.00 per hour, one hour to repair the hole at \$25.00 per hour, plus \$36.00 for paint costs which exceeds the \$100.00 amount claimed for this portion of their claim.

*Tenants’ claim*

Regarding the tenants’ claim, the tenants have claimed a total amount of \$2,625.00 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Two months of compensation for landlord failing to comply with reason stated in the 2 Month Notice to End Tenancy for Landlord’s Use of Property dated April 29, 2016 (the “2 Month Notice”) (\$750.00 x 2)	\$1,500.00
2. One month of compensation for having been issued a 2 Month Notice	\$750.00
3. Return of security deposit	\$375.00
<b>TOTAL</b>	<b>\$2,625.00</b>

Regarding item 1, the tenants have claimed for two months of compensation which was dismissed during the hearing as the tenants failed to provide page two of the 2 Month Notice and there was no evidence before me to support that the landlords failed to comply with the reason stated on the 2 Month Notice.

Regarding item 2, the tenants have claimed for one month of compensation for having been issued a 2 Month Notice by the landlord. The landlord confirmed that he did not provide compensation to the tenants in the amount of one month's rent in the amount of \$750.00 after issuing the tenants a 2 Month Notice with an effective vacancy date of June 30, 2016 and to which caused the end of the tenancy on June 30, 2016.

Regarding item 3, the tenants have claimed for the return of their \$375.00 security deposit which will be dealt with later in this decision. The landlord confirmed that he continues to hold the tenants \$375.00 security deposit.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

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 what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on each applicant 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 respondent. Once that has been established, the applicant(s) must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant(s) did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlord's claim

Firstly, I must deal with the issue of credibility. I do not find the tenants to be credible as they provided inconsistent, vague or unsupported testimony on many occasions throughout the hearing. The first example is when the tenants claim that all of the personal items left on the property at the end of the tenancy were already there when they moved in yet the tenants did not deny that the bike belonged to the tenants. Secondly, the tenants affirmed that they posted their written forwarding address on the rental unit door yet provided no copy of their written forwarding address in evidence. Thirdly, the tenants claim that the face of the cupboards fell off from normal wear and tear and that the damage to the fridge was "fair wear and tear" and that the kitchen and fridge photos show normal wear and tear which I completely disagree with as I find the photos to show damage and not reasonable wear and tear. Fourthly, in terms of the cleaning of the rental unit, the tenants claim they had photos of the rental unit at the end of the tenancy that showed the rental unit in a better condition than the landlord's photos however they did not have the photos as their "phone was destroyed" according to the tenants. And in addition to the above, the tenants claim that the garbage in the photos was already there when they moved in. Given the above, I find the tenants simply disagreed with the landlord's entire monetary claim and that their responses were either contradictory to the photographic evidence or unsupported by their own documentary evidence.

I will deal with the landlord's failure to complete an incoming and outgoing condition inspection report later in this decision.

**Item 1** - The landlord has claimed for \$161.58 for the cost to repair a damaged fridge door handle which the tenants confirmed during the hearing was damaged during the tenancy however the tenants did not agree that they are responsible to pay the amount claimed by the landlord. The tenants also confirmed that the inner door racks were also damaged during the tenancy. Based on the evidence before me I am satisfied that the tenants damaged the fridge handle and inner racks and are responsible for the full amount of **\$161.58** as claimed by the landlord.

**Item 2** - The landlord has claimed \$560.00 for the cost of an exterior living room window. The landlord testified that the tenants removed the window and did not re-

install it properly which resulted in a storm blowing the window out. The landlord confirmed that he did not submit supporting photographic evidence for this portion of his claim. As the landlord failed to provide supporting photographic evidence I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

**Item 3** - The landlord has claimed \$63.00 for the cost to print out colour photos for the purposes of the dispute resolution hearing which was dismissed during the hearing as the landlord was advised that there was no remedy for such costs under the *Act*.

**Item 4** - The landlord has claimed \$381.53 for parts and labour to repair the kitchen cupboards, drawers and door. The landlord referred to several colour photos in evidence and stated that the tenants damaged the cupboards, drawers and door beyond reasonable wear and tear. The tenants claim that during normal wear and tear portions "fell off" and that the kitchen was old and worn out. The landlord did not supply a receipt in evidence for the labour but did supply two receipts for parts in the amounts of \$38.88 and \$2.65. After considering the photos and the testimony of the parties, I find the tenants version of events to be unreasonable and not credible and as a result, I prefer the testimony of the landlord for this item and find the landlord has met the burden of proof and is entitled to the **\$381.53** amount claimed which I find to be a reasonable amount to repair the cabinets and for which I find to have been damage caused by the tenants during the tenancy.

**Item 5** - Regarding item 5, the landlord has claimed \$125.00 for the cost of two exterior door knobs. The landlord submitted a receipt for \$19.96 but could not substantiate how he came to the amount of \$125.00 for this portion of his claim. The tenants did not agree with this portion of the landlord's claim. Due to the landlord being unable to substantiate the amount of this portion of their claim, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

**Item 6** - The landlord has claimed \$320.00 for 14 hours of cleaning comprised of two people cleaning for 7 hours at \$22.86 per hour and that the landlord rounded off to the amount of \$320.00 for cleaning costs. The tenants confirmed that they did not submit any photographic evidence to support that they cleaned the rental unit as their "phone was destroyed". The landlord's photos were taken July 1, 2016 according to the landlord. After carefully reviewing the photographic evidence supplied by the landlords, I am satisfied that the tenants breached section 37 of the *Act* which states:

### **Leaving the rental unit at the end of a tenancy**

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.



**(2) When a tenant vacates a rental unit, the tenant must**

(a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[My emphasis added]

I find the tenants failed to leave the rental unit in reasonable clean condition at the end of the tenancy and that the tenants damaged the rental unit beyond normal wear and tear for a tenancy that lasted between January 2012 and June 2016. Given the above, I find the landlord has established **\$320.00** for cleaning costs as claimed.

**Item 7** - The landlord has claimed \$105.00 for the replacement of a china cabinet and a free standing unit in the rental unit however due to admitting that the amount of \$105.00 was a number chosen at random I find the landlord has failed to meet part three of the test for damages and loss as described above. Therefore, this portion of the landlord's claim is dismissed due to insufficient evidence, without leave to reapply.

**Item 8** - The landlord has claimed \$225.00 to remove what the landlord describes as "contaminated dirt" due to the tenant's growing equipment that had chemicals in it including an unknown white substance. For this item only, I agree with the tenants version of events as I find that it is more likely than not that the white particles in the photos of the dirt is vermiculite found in common potting soil. Furthermore, I find that the landlord provided no evidence that the soil was contaminated as there was no evidence of soil tests submitted in evidence for my consideration. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

**Item 9** - The landlord has claimed \$310.00 to properly dispose of the metal debris left on the rental property by the tenants. The landlord states that the tenants were burning mattresses and a sofa bed on the property which is supported by the photos submitted in evidence which shows mattress springs and a sofa bed frame charred from fire damage. The landlord and his spouse stated that the fire occurred twelve feet from the rental home and that the fire department attended and directed the tenants to put out the fire as it was too close to the home. I find the tenants' testimony that the landlord would advise the tenants to "burn" items on the rental property to be unreasonable and I do not accept the tenants' version of events. I find that burning a mattress or mattresses and a sofa bed is not reasonable and that all costs to properly dispose of the charred

remains including springs, metal frames and other remaining debris is the responsibility of the tenants. Therefore, I grant the landlord **\$310.00** as claimed for this portion of the landlord's claim as I find the landlord has met the burden of proof and that the tenants breached section 37 of the *Act*.

**Item 10** - The landlord has claimed \$225.00 for the cost associated with removing the remainder of the debris on the rental property including large laminate wood beams. As described above, due to the landlord failing to provide a breakdown of how he arrived at the amount of \$225.00 during the hearing, this item is dismissed due to insufficient evidence of the cost being claimed against the tenants.

**Item 11** - The landlord has claimed \$100.00 to repair water damage to the bathroom ceiling which was supported by photographic evidence submitted by the landlords. Although the landlord provided a breakdown that exceeds the \$100.00 amount claimed for this portion of the landlord's monetary claim, I find the photographic evidence clearly supports that there was damage to the ceiling in the bathroom. Furthermore, the tenants did not claim during the hearing that the ceiling was like that at the start of the tenancy and as a result, I accept the landlord's testimony that the damage was caused by the tenants. Therefore, I find the amount claimed to be reasonable and I award the landlord **\$100.00** for this portion of the landlord's monetary claim.

As the landlord's claim was partially successful, I grant the landlord the recovery of the cost of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

#### *Tenants' Claim*

**Item 1** - The tenants have claimed for two months of compensation which was dismissed without leave to reapply during the hearing as the tenants failed to provide page two of the 2 Month Notice and there was no evidence before me to support that the landlords failed to comply with the reason stated on the 2 Month Notice. I find the tenants failed to meet the burden of proof for this portion of their monetary claim.

**Item 2** – The tenants have claimed for one month of compensation for having been issued a 2 Month Notice by the landlord. The landlord confirmed that he did not provide compensation to the tenants in the amount of one month's rent in the amount of \$750.00 after issuing the tenants a 2 Month Notice with an effective vacancy date of June 30, 2016 and to which caused the end of the tenancy on June 30, 2016. Section 51(1) of the *Act* applies and states the following:

**Tenant's compensation: section 49 notice**

**51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.**

[My emphasis added]

Based on the above, I find the landlord breached section 51(1) of the *Act* by failing to compensate the tenants in the amount equivalent to one month's rent which in the matter before me is **\$750.00**. Therefore, I award the tenants **\$750.00** for having been issued a 2 Month Notice pursuant to section 49 of the *Act*.

Regarding item 3, as the landlord continues to hold the tenants' security deposit I will offset that amount of \$375.00 from any amount established by the landlord. I am not satisfied that the tenants have provided sufficient evidence that they served their written forwarding address on the landlord as claimed during the hearing.

Given the above, I find the landlord has established a total monetary claim of **\$1,373.11** comprised of \$161.58 for item 1, \$381.53 for item 4, \$320.00 for item 6, \$310.00 for item 9, \$100.00 for item 11, and \$100.00 for the recovery of the cost of the filing fee. From that amount I deduct the tenant's \$375.00 security deposit which has accrued no interest to date and give the landlord authorization to retain the full \$375.00 security to offset the total amount owing by the tenants to the landlord leaving a balance owing by the tenants to the landlord in the amount of **\$998.11**.

Regarding the tenants' claim, I find the tenants have established a total of **\$750.00** for item 2, and as a result, I deduct \$750.00 from the landlord's \$998.11 claim described above, leaving a final balance owing by the tenants to the landlord in the amount of **\$248.11**.

**I caution** the landlord to comply with sections 23, 35 and 51(1) of the *Act* in the future. Section 23 of the *Act* requires a move-in inspection report to be completed at the start of the tenancy. Section 35 of the *Act* requires a move-out inspection report to be completed at the end of the tenancy, and section 51(1) of the *Act* requires one month's compensation the equivalent of rent when issuing a 2 Month Notice.

**I caution** the tenants to comply with section 37 of the *Act* in the future to leave a rental unit reasonable clean at the end of the tenancy and not to damage the rental unit.

### Conclusion

Both applications are partially successful. The tenants' filing fee was waived so no filing fee was paid by the tenants. The landlord has established a total monetary claim of \$1,373.11 comprised of \$161.58 for item 1, \$381.53 for item 4, \$320.00 for item 6, \$310.00 for item 9, \$100.00 for item 11, and \$100.00 for the recovery of the cost of the filing fee. From that amount the tenant's \$375.00 security deposit was deducted which has accrued no interest to date. The landlord was authorized under the *Act* to retain the tenants' full \$375.00 security to offset the total amount owing by the tenants to the landlord leaving a balance owing by the tenants to the landlord in the amount of \$998.11. The tenants have established a total of \$750.00 for item 2, and as a result, I deduct \$750.00 from the landlord's \$998.11 claim described above, leaving a final balance owing by the tenants to the landlord in the amount of \$248.11.

The landlord is granted a monetary order pursuant to section 67 of the *Act*, for the amount owing by the tenants to the landlord in the amount of \$248.11. Should the landlord require enforcement of the monetary order the landlord must first serve the tenants and then the monetary 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: September 25, 2017

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Residential Tenancy Branch