



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for damage to the unit, site or property, monetary loss or other money owed, recovery of the \$100.00 filing fee, and the retention of the security deposit paid by the Tenant in relation to these matters. The Landlord also sought other unspecified remedies.

The hearing was convened by telephone conference call and was attended by the Landlord and the Tenant, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision. At the request of the Tenant, a copy of the Decision will be e-mailed to her at the e-mail address provided in the hearing. At the request of the Landlord, copies of the Decision and any Monetary Order issued to the Landlord, will be e-mailed to her at the e-mail address provided in the Application.

### Preliminary Matters

At the outset of the hearing the Landlord withdrew her claim for other matters as she stated that her claim for damages, recovery of the filing fee, and retention of the Tenant’s security deposit covered all of her claims. As a result, the Landlord’s Application was amended to withdraw this claim and the hearing proceeded based on the remaining monetary claims of the Landlord.

### Issue(s) to be Decided

Is the Landlord entitled to retain the security deposit paid by the Tenant and to receive a Monetary Order pursuant to sections 67 and 72 of the Act?

### Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the month to month tenancy began September 1, 2008, at a monthly rent of \$1,300.00. Both parties agreed that the rent has been increased since the start of the tenancy and that rent in the amount of \$1,389.15 is currently due on the first day of each month. The parties also agreed that a \$650.00 security deposit was paid by the Tenant, which the Landlord still holds. The Tenant testified that she moved out of the rental unit on June 1, 2017, and provided her forwarding address to the Landlord in writing the following day. The Landlord testified that she applied for a Monetary Order for damages and to retain the Tenant's security deposit on June 16, 2017, 14 days after she received the Tenant's forwarding address in writing. Both parties also agreed that the move-in/move-out condition inspection reports in the documentary evidence before me accurately reflected the condition of the property and that the property was in good condition at the time the tenancy began.

The Landlord sought \$1,606.77 for damage to the unit, site or property, monetary loss or other money owed, retention of the security deposit, and recovery of the filing fee. Although both parties provided significant documentary evidence and testimony in relation to the Landlord's claims, the relevant evidence, testimony and the position of the parties is summarized below.

### **Yard Maintenance**

The Landlord testified that the Tenant was required under the tenancy agreement to cut and water the grass, remove snow and leaves, and weed the property, including the driveway and patio. She testified that at the end of the tenancy the lawn and property were not properly maintained and sought \$210.00 for the cost of lawn maintenance and weed removal. In support of her testimony she provided photographic evidence showing the condition of the property and a quote from a lawn maintenance service.

The Tenant testified that the state of the yard at the time the tenancy ended was as shown in the photographs and acknowledged that she was required to cut and water the grass and remove snow and leaves under the tenancy agreement. However, the Tenant disputed that she was required to weed the property.

### **Overholding**

Both parties agreed that the tenancy ended at 1:00 P.M. on May 31, 2017, and that the Tenant was required to move out of the rental unit at that time. However, both parties agreed that the Tenant did not move out until June 1, 2017, and as a result, the Landlord sought \$46.31 from the Tenant for overholding the rental unit. The Landlord testified that she calculated this amount by dividing the monthly rent by the number of days in the month.

### **Smoke Detector**

The Landlord testified that the Tenant damaged the smoke detector on the property and sought the \$39.99 paid for its replacement. In support of her testimony, the Landlord provided a photograph of an empty smoke detector bracket on the ceiling, and photos of the replacement smoke detector. The Tenant denied damaging the smoke detector but acknowledged that she did remove it because it frequently went off while she was cooking. The Tenant acknowledged that the smoke detector was detached as shown in the photograph submitted by the Landlord but testified that it was still functional at the time it was replaced.

### **Cleaning**

The Landlord stated that after the Tenant moved out, she was required to clean the stove fan, the fireplace glass, and the floor behind the fridge. The Landlord submitted several quotes from fireplace maintenance companies and testified that ultimately she paid \$70.00 for the cleaning of the fireplace glass. The Landlord also sought \$55.00 in cleaning costs for the approximately one hour she spent cleaning the stove fan and the floor behind the fridge. In support of her claim for \$55.00, she submitted a cleaning company quote for \$110.00, stating that she opted to clean the items herself for half the price. The Tenant acknowledged that the stove fan and the fireplace glass were not cleaned prior to moving out. However, the Tenant testified that she cleaned behind the fridge prior to move-out and argued that the stove fan was dirty when she moved in.

### **Composter**

The Landlord sought \$35.00 for the replacement of a composter she stated was delivered to the rental address approximately 8 years ago and went missing shortly thereafter. Both parties agreed that the composter had been delivered and that it went missing, however, both parties testified that they did not know what happened to it.

### **Carpet Burn**

Both parties agreed that a small section of carpet had been burned during the course of the Tenancy. The Landlord stated that the carpet was approximately 10.5 years old and sought \$380.00 in order to replace it. The Tenant argued that it was not necessary to replace the entire carpet and stated that simply repairing the small damaged area would be sufficient and significantly cheaper at an approximate cost of between \$195.00 - \$220.00.

### **Broken Window**

Both parties acknowledged that during the course of the tenancy the glass in a basement window was broken. The Landlord testified that she suspects that a rock damaged the window when it was thrown by the lawnmower; however, the Tenant denied that this occurred and stated that she is unaware of exactly how the window was broken. The Tenant stated that people often cut through the yard and in so doing, walk past the window. As a result, the Tenant argued that the window could have been broken by anyone and stated that she reported it immediately to the Landlord upon noticing the damage. The Landlord testified that the windows are original to the house, which was built in 1954, and submitted a quote for \$179.77 for the repair of the window.

### **Screen Door**

The Landlord sought \$50.00 for the repair of a screen door handle and screen which she stated were damaged during the tenancy. The Tenant acknowledged that the screen door handle fell off and that the screen door fell into disrepair, however, she stated that she advised the Landlord of the issue and requested that it be repaired to no avail. Further to this the Tenant argued that the door is very old and that the damage is the result of wear and tear over time, not the actions of the Tenant or her children. When asked, the Landlord stated that the screen door is original to the house which was built in 1954.

### **Back Door Handle**

Both parties acknowledged that the handle for the back door fell off in July 2016. The Landlord testified that this is the direct result of the treatment of the door by the Tenants as the door was only nine years old and in good working condition at the start of the tenancy. The Landlord also testified that it appears to have been damaged by a great amount of force. The Tenant denied that their actions were the cause of the damage to the door handle and testified that it simply fell off when her son went to take the garbage out. The Tenant argued that someone may have attempted to break-into the home, which could have caused the damage, and stated that she reported the damage to the Landlord's son next door. The Landlord sought \$60.00 for the replacement of the door handle.

### **Bathroom**

The Landlord made several claims in relation to the bathroom, most of which stem from the same issue; the Tenant's alleged failure to properly vent the bathroom after use of the shower or bathtub. The Landlord testified that the Tenant's failure to properly vent the bathroom by opening the window has resulted in corrosion to bathroom fixtures, damage to the paint on the bathroom walls and ceiling, and damage to the interior of a bathroom cabinet. The Landlord testified that the towel rack has already been replaced twice throughout the tenancy due to corrosion and that the bathroom has been painted three times during the tenancy due to moisture damage. The Landlord testified that the last towel rack installed has now broken due to corrosion and both parties acknowledged that the faucet in the bathroom had popped off due to corrosion. The Landlord stated that the damage to the faucet also caused a leak resulting in damage to the bathroom cabinet. In total the Landlord sought \$365.00 for parts and labor to replace the faucet, repair the cabinet and repaint the bathroom. In support of her testimony, the Landlord submitted photos of the broken faucet and towel rack, the damage to the cabinet, which the Landlord stated was new at the start of the tenancy, photos of the peeling paint in the bathroom, a quote from a plumbing company and price comparisons for comparable bathroom fixtures.

The Tenant acknowledged the moisture damage noted by the Landlord but denied that she was responsible for the costs of repairing it. The Tenant stated that after use, the bathroom door would be left open for ventilation and that if guests were not in the house, the door would be left open when showering. The Tenant acknowledged that there was a window in the bathroom but stated that she was advised by the Landlord not to use it. The Landlord denied that the Tenant was ever advised not to use the window for ventilation and argued that the purpose of the window was actually to provide

ventilation to the bathroom as there is no fan. In any event, the Tenant stated that the window was difficult to open but acknowledged that the Landlord was never advised of this issue.

The Landlord also sought \$50.00 to remount the toilet which she testified is now askew. The Tenant acknowledged that the toilet is slightly askew but barely noticeable and stated that as a result she is unsure if it was like this at the beginning of the tenancy, if this simply happened over time, or if it occurred as a result of repairs and maintenance completed by workers or the Landlord's son in the bathroom. The Landlord submitted a photo of the toilet and a quote for repairs.

### Analysis

Both parties acknowledged that the tenancy ended at 1:00 pm on May 31, 2017, and that the Tenant did not move out of the rental unit until sometime on June 1, 2017. Section 57(3) of the Act states that a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. As a result, I find that the Landlord is entitled to \$46.31 for overholding the rental unit pursuant to section 57(3) of the *Act*.

Section 32 of the *Act* outlines the obligations of both landlords and tenants to repair and maintain a rental unit over the course of a tenancy as follows:

### **Landlord and tenant obligations to repair and maintain**

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
  - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 37 of the *Act* also outlines how a tenant must leave the rental unit at the end of a tenancy:

### **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.

Pursuant to section 37 of the *Act*, I find that the Landlord is entitled to \$70.00 for the cost of cleaning the fireplace glass as the Tenant acknowledged that she did not clean this prior to moving out and the amount claimed by the Landlord for this service is significantly less than the quotes submitted. While I dismiss the Landlord's claim for cleaning behind the fridge as the move-out inspection report lists no issue with the cleanliness of this area and the Tenant testified that she cleaned it prior to move-out, the Tenant acknowledged that she did not clean the stove fan during the almost 9 year tenancy. The cleaning service quote stated that the cleaning of the fan and cleaning behind the fridge would take approximately one hour. Although I have dismissed the Landlord's claim for cleaning behind the fridge, I find it reasonable under the circumstances to award the Landlord half an hour worth of cleaning costs for the cleaning the stove fan. In the Monetary Order Worksheet the Landlord claimed cleaning costs at \$55.00 per hour, which she testified was based off the cleaning service quote of \$110.00 per hour for two professional cleaners. As the Landlord indicated she would clean the fan herself, I find \$30.00 an hour a more reasonable rate for cleaning services and the Landlord is therefore entitled to \$15.00 for cleaning.

Policy Guideline 40 states that the useful life expectancy of carpet is 10 years and the Landlord acknowledged in the hearing that the carpet in the rental unit is over 10 years old. As a result, I decline to grant the Landlord the full cost of replacing the carpet. However, as the Tenant acknowledged that the carpet was burned by her son, and submitted documentary evidence and testimony offering to pay for the repair of the carpet at a cost of \$195.00 - \$200.00, I find it reasonable to grant the Landlord \$200.00 for the cost of repairing this damage.

Under the tenancy agreement, the *Act*, and the regulation, the tenant is required to complete routine yard maintenance, which includes cutting grass, and clearing snow. While Policy Guideline 40 states that a tenant is responsible for a reasonable amount of weeding the flower beds, it states that a tenant is only responsible for this if the tenancy agreement requires the tenant to maintain the flower beds. As there is no evidence before me that the tenancy agreement requires the tenant to maintain the flower beds, I find that the tenant is not responsible for this maintenance. I also find that there is insufficient evidence before me to establish that the Tenant is responsible for weeding cracks in the driveway, patio, and walkways as asserted by the Landlord. As a result I dismiss the Landlord's claim for these costs without leave to reapply. As the pictures submitted by the Landlord clearly establish that the lawn had not been recently mowed at the time the tenancy ended, and the Tenant agreed that these pictures accurately represent the state of the yard at the time she moved out, I grant the Landlord \$20.00 for one hour of yard maintenance based upon the quote and the Monetary Order Worksheet submitted by the Landlord.

Although both parties provided significant testimony regarding who is at fault for the deterioration of the bathroom paint and fixtures, ultimately both parties agreed that the cause of the problems was excessive moisture. As the Tenant acknowledged that she did not vent the bathroom by opening the exterior window which was present in the bathroom for the express purpose of venting moisture, I find that the damage caused by the moisture was the fault of the Tenant. As a result, I grant the Landlord the \$377.00 sought for replacing the towel bar and faucet, repairing the damaged cabinet, and cleaning, scraping, and repainting the bathroom walls and ceiling.

For the following reasons, I dismiss the Landlord's remaining claims without leave to reapply. Neither party was able to say with any certainty what happened to the composter, the basement window, or the handle on the rear exterior door. As a result, I find that the Landlord has failed to establish, on a balance of probabilities, that the Tenant or a person permitted on the property by the Tenant, is responsible for this damage. Further to this, I note that the basement window is well past the 15 year useful life expectancy of windows as outline in Policy Guideline 40. I dismiss the Landlord's claim for the replacement of the smoke detector as there is insufficient evidence before



to establish that the smoke detector needed to be replaced instead of simply remounted and I dismiss the Landlord's claim for the remounting of the toilet as I am not satisfied that the slight shifting of the toilet did not simply occur as a matter of regular use over time. In addition to this, there is no evidence that the toilet is leaking or non-functional as a result of the very small shift in alignment.

As the screen door is also well past its useful life of 20 years according to Policy Guideline 40, and the evidence and testimony before me suggests that the damage is normal wear and tear for which the Tenant is not responsible, I also decline to grant the Landlord any costs associated with its replacement or repair.

As a result of the foregoing, I find that the Landlord is entitled to compensation for damages in the amount of \$728.31, plus \$100.00 for the recovery of the filing fee. At the request of the Landlord, and pursuant to section 72 of the *Act*, I find that the Landlord is entitled to retain in full, the \$650.00 security deposit paid by the Tenant in partial recovery of these costs. The Landlord is therefore also entitled to a Monetary Order in the amount of \$178.31 for the remaining balance of money owed for damages and the filing fee.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$178.31. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 15, 2017

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Residential Tenancy Branch