



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's 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 tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant confirmed receipt of the landlord's notice of hearing package and all of the submitted documentary evidence. The landlord confirmed receipt of the tenant's submitted documentary evidence package. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence of both parties, I find that both parties are deemed sufficiently served as per section 90 of the Act.

At the outset, the landlord confirmed that she had returned the tenant's security deposit of \$425.00 and that the request to recover the \$425.00 security deposit is not required. As such, this portion of the landlord's claim requires no further action.

### Preliminary Issue(s)

During the hearing both parties confirmed the existence of a settlement agreement regarding a portion of the landlord's monetary claim. Both parties confirmed that it was recent and that it would impact the landlord's monetary application. As such, I find that

an adjournment is warranted and that neither party shall be prejudiced by an adjournment.

The landlord was directed to complete an amended monetary worksheet (#RTB-37) with the updated monetary claim without the items listed as part of a settlement agreement made between the two parties. The landlord was directed to file this amendment with the Residential Tenancy Branch (RTB) and provide a copy to the tenant by February 16, 2018.

During the hearing the tenant stated that a late evidence package was provided to the RTB on January 31, 2018. A copy was not provided to the landlord. The tenant was directed to provide a second copy (and a copy of the facsimile confirmation) to the RTB and to the landlord forthwith.

Both parties were cautioned that no further evidence was to be submitted, nor would it be accepted other than the exception noted above. Both parties were notified that a new notice of an adjourned hearing letter would be sent to both parties to the confirmed addresses on the landlord's application for dispute.

On June 1, 2018 the hearing was reconvened with both parties. Both parties confirmed receipt of the landlord's amended monetary claim of \$5,829.23 and receipt of the tenant's late evidence package.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

#### Background and Evidence

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

This tenancy began on November 1, 2014 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated October 31, 2014. The monthly rent began at \$850.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$425.00 was paid on November 1, 2014.

The landlord seeks an amended monetary claim of \$5,829.23 which consists of:

\$170.92	Repair Damaged Tub
\$100.00	Recover Filing Fee
\$120.00	Recover Writ of Possession, Filing Fee
\$1,173.38	Recover Bailiff Costs
\$465.50	Recover Dumpster Costs
\$1,629.77	Recover Strata Emergency Plumbing costs
\$850.00	Unpaid Rent/Loss of Rental Income, June
\$947.16	Replace Main Kitchen Light
\$12.50	Replace Smoke Alarm
\$360.00	Cleaning, labour 8 hours for 3 ppl.= 24 hours X \$15.00/hr.

The tenant disputed that the below listed items of claim were resolved as part of the insurance claim settlement:

\$170.92	Repair Damaged Tub
\$947.16	Replace Main Kitchen Light
\$12.50	Replace Smoke Alarm

The landlord stated that these items were dealt with prior to the insurance company becoming involved and were not included as part of the settlement claim. The tenant argued that the settlement deals with "all property damage..." The tenant confirmed this, but has referred to page 11 of the insurance opening statement listing damage which refers to a fluorescent light fixture for the kitchen. The landlord was unable to provide sufficient evidence that these three listed items were exceptions to the settlement agreement with the insurance company. On this basis, I find that these three items were part of the "all property damage" settlement and are dismissed. The hearing shall continue with the remaining listed items.

The landlord has submitted in support of these remaining claims invoices, photographs, a copy of a condition inspection report for the move-in dated November 1, 2014 in comparison with an incomplete condition inspection report for the move-out (by the landlord) on June 24, 2017. The tenant's agent argued that the tenant is incapable of making decisions regarding financial and legal affairs as shown in the tenant's submitted copy of a "Certificate of Incapability" dated March 31, 2003. The tenant's agent submits that the tenant is incapable of managing his financial and legal affairs due to a mental infirmity arising from a head injury as concluded after assessment by a Doctor. The tenant argued that the landlord was informed of this issue as they dealt

with all or his rent payments and communications. The landlord disputed this stating that the tenant was living independently and that no such notification was made to the landlord. The tenant's agent was not able to provide any supporting evidence of notification.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In reviewing all of the material and submissions from both parties, I find that the landlord is substantively successful in her monetary claim of \$3,773.15 on the following items:

\$120.00	Recovery Writ of Possession, Filing Fee
\$1,173.38	Recovery Bailiff Costs
\$1,629.77	Recovery Strata Emergency Plumbing costs
\$850.00	Unpaid Rent/Loss of Rental Income, June

The tenant's agent provided no comment on these issues, save and except the \$850.00 unpaid rent for June 2017. The tenant's agent did not dispute that June rent was not paid and only conceded that pro-rated rent could be paid for the period June 1-11. I find that this is insufficient as the landlord had to contend with the insurance claims during this period of time between June 12-30 and that the landlord would be unable to re-rent the unit within that period of time without proper notice from the tenant and as the tenant was being evicted as a result of a writ of possession that is not possible. As such, I find that the landlord is entitled to the entire June 2017 rent of \$850.00.

I find based upon the evidence of both parties that the landlord has failed to provide sufficient evidence regarding the exception of property damage(s) claimed that were not included as part of the insurance settlement. The tenant has disputed these claims and the landlord was unable to provide sufficient evidence to satisfy me that an exception to

the settlement was made. As such, all claims regarding property damage are dismissed from the landlord's claim.

On the remaining item of \$360.00 for cleaning and \$465.50 for dumpsters for garbage, the tenant disputed this stating that cleaning and dumpster costs were covered as part of the insurance settlement. The landlord clarified that the insurance settlement covered only partial cleaning until they determined that hazardous materials were present and could not continue the cleaning. This forced the landlord to rent 2 dumpsters for \$465.50 and cleaning labour of \$360.00 for 3 people at 8 hours each (24 hours total at \$15.00 per hour). The tenant has referred to page 11 of the detailed insurance statement which refers to "haul debris" and "cleaning technician" as part of the claim. The landlord was unable to provide sufficient supporting evidence that additional dumpsters/cleaning labour was required due to hazardous materials found onsite. On this basis, these items are dismissed.

The landlord has established a total monetary claim of \$3,773.15. The landlord having been substantially successful in her application is entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlord is granted a monetary order for \$3,873.15.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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: June 5, 2018

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Residential Tenancy Branch