



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MND MNDCL MNSD MNDCT FF

### **Introduction:**

Both parties filed Applications and both attended the hearing and gave sworn testimony. The landlord testified that they served the Application for Dispute Resolution dated May July 16, 2018 on the tenant by registered mail and the tenant testified they served their Application dated October 24, 2018 by registered mail also. Both parties agreed they had received them as stated. I find the documents were legally served pursuant to section 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

The tenant applies pursuant to the Act for orders as follows:

- d) A monetary order as compensation for their items discarded by the landlord;
- e) a refund of \$650 of their security deposit; and
- f) aggravated damages for stress and injury suffered through the landlord's actions at move-out; and
- g) An order to recover the filing fee pursuant to section 72.

### **Issue(s) to be Decided:**

Has the landlord proved on a balance of probabilities that the tenant damaged the property and that it was beyond reasonable wear and tear? What is the cost of the losses incurred by the landlord? Is the landlord entitled to recover the filing fee?

Has the tenant proved on the balance of probabilities that the landlord wrongfully disposed of some of their belongings at move-out? Have they proved entitlement to aggravated damages? Are they entitled to recover the filing fee?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. They agreed the tenancy commenced September

1, 2016, that monthly rent was \$1700 and a security deposit of \$850 and pet damage deposit of \$300 were paid. The landlord claims as follows:

1. \$2800 to fix damaged walls and paint. Two thirds of the rooms were painted about 2014, two years prior to the tenancy commencing and one third of them were done in 2016. The tenant said they had permission to put up shelving. The landlord said they thought it was one shelf; they did not see the shelves or know the extent of damage to walls.
2. \$561.22: to replace a 10 year old dishwasher that was broken. It had plastic and paper in it and filled up with dirty, brown water. The tenant said it had only been working 25% of the time and they had paid once to have it cleaned out and the code causing the lights to blink to be repaired.
3. \$612 for cleaning for 34 hrs at \$18 hr. The tenants agree they did not have time to clean at move-out,
4. \$2534.04 to replace carpets that were 10 or 11 years old in 2016.
5. \$1886.71 to replace laminate flooring that was 11 years old.
6. \$18.15 dump fees for garbage run.
7. \$17.65 for supplies to fix door stops, replace plug covers, toilet seal and bolts
8. \$49.74 for supplies to fix damage including a toilet seal, bolts, outdoor light fixture and an appliance bulb. (toilet about 11 years old)
9. \$950 to fix damage.

The tenant's monetary claim is as follows:

10. \$64 for two snow shovels new at move-in
11. \$37 for a grass trimmer (weed whacker) bought May 2017
12. \$17 for a rake, \$23 for a hoe, \$35 for an ice chopper, \$23 for a cultivator all new at move-in for their previous belongings were destroyed in a community wild fire.
13. \$400 for a convertible crib that was 4 years old;
14. \$390 for a BMW convertible bike that was bought around 2014.
15. \$650 as part of their security deposit. They thought it might take \$500 to clean so were forfeiting the balance( \$850 deposit + 300 pet deposit -\$500 allowance =\$650)
16. \$6000 for aggravated damages

The parties explained that the tenancy was to end on June 30, 2018 but when the tenant asked for another day, the landlord arranged with their landlord to move out a day later to accommodate their tenants. The landlords arrived with their goods at the home around noon on July 1, 2018 and were upset when the female tenant came out and told the male landlord that they were not ready yet. The female landlord said they

calmly accepted this and went to sit on a neighbour's lawn chairs and eat some lunch but the tenant describes it differently. She said the male landlord smelt of alcohol and was loud and abusive in his language; the female landlord and her daughter entered the home and proceeded to take pictures and do an inspection as they attempted to move-out. People were angry and abusive and she had to call the Police for she felt threatened. She said she was at the top of the stairs and the landlord's daughter told her to let her pass but before she could move, she forced her way past, hitting the tenant on the chest and almost throwing her down the stairs. She said she has PTSD after losing everything in the wild fire in 2016 and has some physical disability so she has to move slowly. She claims this event bruised and injured her and caused her to miss time from work. She was unable to open her store in the new location for a month. The landlord said the female tenant was standing at the top of the stairs holding a rectangular object and she told her daughter that she could not pass. When her daughter tried to get out, she accidentally touched the tenant's elbow.

In respect to the goods claimed as discarded, the landlord said the tenants finally got things loaded about 3:30 p.m. on July 1, 2018 and gave them the keys. They said they left a few items and would be back to get them. The Police person who was present advised them to put the tenant's left-behind goods in a pile with the garbage. They did this but at 10:30 p.m. when the tenants had not returned, they put them in their truck to take to the dump because of bears in the area. They said the bike was old with bald tires and very small, they had left two snow shovels for the tenants and did not see others the tenants claim they bought, the rake had tines missing, and they did see a garden hoe and weed whacker but not the other items claimed by the tenants. They say someone else may have picked up the missing items.

The landlord supplied photographs as evidence of the damage, statements of witnesses, and some invoices. They said they are still living out of boxes as the necessary work has not been completed. The tenant also supplied photographs, estimates and statements of other persons. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

**Analysis:**

There is a significant amount of evidence. Although I have considered all the evidence, I will reference only that evidence which is relevant to my Decision.

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 whatever was reasonable to minimize the damage or loss.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. As explained to the parties in the hearing, reasonable wear and tear is calculated by using Residential Policy Guideline 37 which assigns a useful life to items in rented premises.

Although the tenants contended there was very little damage, I find the weight of the evidence is that there was some paint damage, some carpet damage and the home was not cleaned as the tenants had to rush to move out. I find the tenants responsible for the damage that is beyond reasonable wear and tear. I find interior paint is assigned a useful life of 4 years and the evidence is that two thirds of the rooms were painted over 4 years ago. I find the landlord not entitled to compensation for the paint that is over 4 years old as that was at the end of its useful life. The remaining third would cost \$933.33 (\$2800/3) and that third was two years old at the end of the tenancy. I find the landlord entitled to compensation of \$466.66 (50%) towards the cost of repainting for that portion of the painting. Regarding the repairs needed due to shelf mounting and other damages to the walls, doors and upper fireplace hearth, I find the landlord entitled to recover \$500 as a portion of the estimate. The estimate of \$950 from the carpenter included sanding and painting which is covered by the allowance for repainting so is not doubly compensated.

In respect to the dishwasher, I find this appliance is assigned a useful life of 10 years in the Guideline so I find the landlord not entitled to compensation for its replacement as it was at the end of its useful life. I dismiss this portion of their claim.

I find the tenant agreed the home needed cleaning so I find the landlord entitled to recover the cleaning cost of \$612. As this compensates the landlord for cleaning, the cleaning cost of \$500 deducted by the tenant from her security deposit for cleaning will be added back to the tenant's request for the refund of the deposits totalling \$1150.

I also find the landlord entitled to their dumping fees of \$18.15. I find the tenants violated section 37 of the *Act* by not leaving the unit clean and tidy.

I find insufficient evidence of the age of the toilet, door stops, bolts, and light fixtures; I also note it is the landlord's responsibility to repair these items as part of home maintenance so I find the landlord not entitled to recover the \$17.65 and \$49.74 for fixing this damage.

The Guideline assigns carpets a useful life of 10 years. The evidence is these carpets were 10 or 11 years old and at the end of their useful life so I find the landlord is not entitled to compensation for their replacement. Likewise, I find the laminate flooring was at the end of its useful life of 10 years so I find the landlord not entitled to compensation for its replacement.

In respect to the tenant's claim, I find the landlord agreed there was a 'weed whacker' (grass trimmer), a rake with tines missing and a garden hoe put outside on the 'pile' that the tenant was asked to pick up. I find they said they left two snow shovels for the tenant so I find insufficient evidence that the tenants bought two more. I find the weight of the evidence is that there was also an ice chopper, cultivator and some cables. The tenants had been victims of a wild fire and lost everything so I think it likely that these items were bought in 2016 or 2017 although the tenants had no receipts to prove their costs. I find the convertible crib and the BMW bike that were both about 4 years old were lost also. Part 5 of the Residential Tenancy Regulation deals with personal property of the tenant. Section 24 states the landlord is not entitled to consider it abandoned unless the tenant expressly states they are not returning for it. Section 25 sets out the landlord's obligations, in particular, section 25(1)(a) states the landlord must store it in a safe place for a period of at least 60 days. In this case, I find the landlord did not fulfill their obligations but got rid of it later the same day. I find the landlord responsible to compensate the tenant for this violation of the regulations.

I find most of the items were tools. Similar items are assigned a useful life of 10 years in the Guidelines. As the items were about 2 years old at disposal, I find the tenant entitled to recover 80% of their cost which is \$29.60 for the grass trimmer (weed whacker), \$32 for the rake and garden hoe, \$46.40 for the ice chopper and cultivator. Electric wiring is assigned a useful life of 15 years so I find the tenants entitled to recover 86% of the cost of the cables or \$77.99.

Regarding the convertible crib and BMX bike, I find they were both about 4 years old. Although the landlord argued the bike was small and stripped down, I find the evidence of the tenant credible that this is characteristic of the competition events for these bikes and her son is a competitor. I find them entitled to recover 60% of the cost of the crib or

\$234 (wood furniture with life of 10 years) and 73% of the cost of the BMX or \$286 (mechanical object with life of 15 years).

In regard to the aggravated damage claim of the tenant, I find Policy Guideline 6 considers the issue of such damages. It states an arbitrator may award these where a very serious situation has been allowed to continue. They are intended to take into account intangibles such as distress and humiliation that may have been caused by the respondent's behaviour. Policy Guideline 16 states they are intended to compensate the person wronged for aggravation to the injury caused by the wrongdoer's wilful or reckless indifferent behaviour. They are measured by the wronged person's suffering. It notes some criteria such as the damage must be caused by the deliberate or negligent act or omission of the wrongdoer and must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life.

I find the weight of the evidence in this case is that the landlord and tenant had a reasonably good relationship up to the move-out date. I find the landlord accommodated the tenants by arranging to move out a day late from their own rental yet when they came to the tenant's home, they were greeted by the tenant telling them that they were not moved out. I find the landlord's evidence credible that they waited until 1 p.m. before going in for inspection and finding the unit very dirty. I find there was heated argument between landlord and tenant and the word 'pig' was used. I find insufficient evidence of significant wrongdoing by the landlord in this exchange. I find the tenant equally at fault. Regarding the incident on the staircase, I find insufficient evidence of any serious injury to the tenant. I find it credible that the landlord's daughter wanted to exit and pushed past the tenant on the stairs and inadvertently hit her elbow. These were all one time events and I find not of sufficient depth or duration to award aggravated damages.

Although the tenant said she could not work for a month, I find the evidence indicates her life was filled with other stressors. She was moving into a new home, she had to clean the new home and had to open her store in a new location. I find it likely that her inability to work was caused by the stress of her other activities rather than by a one time confrontation with the landlord of short duration. In summary, I find insufficient evidence to support an award for aggravated damages and I dismiss this claim.

**Conclusion:**

I find the parties entitled to compensation as calculated below and to recover their filing fees as both claims had merit. I find the balance is in favour of the tenant (\$1955.99- \$1696.81 = 309.18) so a Monetary Order is issued to the tenant for \$259.18.

**Calculation of Monetary Award:**

Landlord	
Paint Allowance	466.66
Repair Allowance	500.00
Cleaning cost	612
Dumping fee	18.15
Filing fee	100.00
Total Monetary order to landlord	1696.81

Tenant	
Tools allowance; 29.60 +32+46.40	108.00
Cables allowance	77.99
Crib allowance	234.00
BMX bike allowance	286.00
Security and pet deposit	1150.00
Filing fee	100.00
Total monetary order to tenant	1955.99

**Result of Offsetting Amounts:**

	<b>1955.99</b>
<b>Tenant award</b>	
<b>Landlord Award</b>	-1696.81
<b>Monetary Order in favour of tenant</b>	<b>259.18</b>

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: November 15, 2018

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Residential Tenancy Branch