



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for loss of rent, for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both parties confirmed under affirmation that they were not recording the hearing in compliance with the Residential Tenancy Branch Rules of Procedure (the “Rules”)

### Preliminary and Procedural Issues

The landlord confirmed that they received the tenant’s evidence within the timeframe permitted by the Rules. The tenant stated they just received the landlord’s evidence and have not had time to review the evidence or respond.

The landlord stated they were sick at the beginning of October 2021 and that are still sick and was not able to file or serve their evidence within the timeframe.

In this case, the landlord made their application for dispute resolution on April 28, 2021. Under Rule 2.5 the landlord must submit with their Application for Dispute Resolution to the extent possible a detailed calculation of their monetary claim and all other documentary evidence they wish to rely upon at the hearing. I find the landlord has failed to comply with Rule 2.5.

The landlord's evidence was filed on October 21, 2021, six days before the hearing, and subsequently served on the tenant. The landlord had six months advance notice of the hearing. Even, if I accept the landlord may have been ill in the month of October 2021; however, the landlord's evidence was available at the time they made their application, the photographs, receipts all predate their application and had ample time to provide it to the tenant before they became ill. The landlord provided no reason as to why they did not comply with Rule 2.5 or why they could not serve their evidence within a reasonable time period after filing their application. I find the landlord willfully failed to comply with the Rules and clearly was waiting for the last possible time to file their evidence. I find it would be unfair and against the principle of natural justice to allow the landlord evidence to be considered. Therefore, I have excluded the landlord's evidence.

I have also read the details in the landlord's application which reads as follows:

"The tenant and his wife did cause many damages to my appliances in addition to other parts of my property. He also refused the applicants access to the apartment for the showing except once and I couldn't rent it as a result. I have all the bills in addition to witnesses to back up my claims".

[Reproduced as written.]

I informed the landlord at the hearing that their details of the dispute is lacking sufficient details, as an example it states the tenants caused damage to my appliances in addition to other parts of my property. However, the landlord provided no details on what other parts of damage was cause to their property that are to be consider. This lack of details puts the other party at a disadvantage. The landlord was informed that their lack of details in their claim may impact their claim as I must consider the principals of natural justice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to a monetary order for loss of rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties agreed that the tenancy began on February 9, 2021. Rent in the amount of \$1,950.00 was payable on the first of each month. The tenant paid a security deposit of \$975.00. The tenancy ended on March 31, 2021.

The landlord confirmed the did not complete a move-in or move-out condition inspection report with the tenant.

The landlord states that they claim the following:

a.	Cleaning costs	\$ 547.00
b.	Broken door handle	\$ 118.30
c.	Appliance repair	\$ 470.40
d.	Loss of rent for April	\$1,950.00
e.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$3,185.70</b>

#### Cleaning costs

The landlord testified that the tenant did not leave the rental unit clean, and it was extremely dirty and stinky, which they think was body odour. The landlord stated the refrigerator was not properly cleaned and the oven extremely dirty. The landlord stated the carpet was stained and that the drains were plugged with hair. The landlord seeks to recover the cost of cleaning in the amount of \$547.00.

The tenant testified that the landlord did not do a move-out condition, nor would the landlord give them sufficient time to make a proper video, and they took a quick video of what they could. The tenant stated that its offensive the landlord is stating that the residence was stinky due to body odour. The tenant stated that the landlord did not like the smell from the foods they were cooking. The tenant stated that when they returned the keys to the landlord at the end of the tenancy there was nothing said about the rental unit being uncleaned.

#### Broken door handle

The landlord testified that the door that gives access to the rental unit, interior door handle was on the floor at the end of the tenancy. The landlord stated that they had to have the handle replaced and installed. The landlord seeks to recover the amount of \$118.30.

The tenant asked the landlord what door handle they are referring to, as they were provided no details. The landlord stated it was the door handle on the brown door.

The tenant testified that this is the first time they are hearing anything about the door handle. The tenant stated they received an email from the landlord on April 15, 2021 and nothing in the email states anything about a door handle, nor does the landlord's application for dispute resolution. The tenant stated that one of their photographs filed in evidence which was submitted to show the landlord was storing items, shows the door handle on the door. The tenant stated that if the door handle was off the door, it would have been notice at the time the landlord locked the door.

#### Appliance repair

The landlord testified that the dishwasher was working at the start of the tenancy. The landlord stated that during the tenancy they saw the control panel light flashing and the tenant informed them that they would have it fixed it.

The landlord testified that the tenants did not repair the dishwasher and they had it repaired. The landlord stated they were told by the appliance technician that the control panel can only be broken from neglect. The landlord stated that the dishwasher was four years old and seeks to recover the cost of the repair in the amount of \$470.40.

The tenant testified that at the start of the tenancy the dishwasher panel was flashing and not working. The tenant stated they did not cause any damage to the dishwasher and they only said to the landlord that they would try and see what the problem was from reading the manual.

#### Loss of rent for April

The landlord testified that the tenant would not let them show the rental unit, except on one occasion and they were unable to find a renter for April 2021. The landlord seeks to recover loss of rent in the amount of \$1,950.00.

The tenant testified that do not agree that they denied the landlord access. The tenant submits in the landlord's email dated April 15, 2021 which shows the rental unit was already rented. Filed in evidence is a copy of the email, which in the email the landlord writes,

“I also advised the ones living in my apartment to call the police immediately if you show up near the apartment”

[Reproduced as written.]

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

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.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### Cleaning costs

I find I must dismiss the landlord’s claim for cleaning. The landlord did not provide any details in their application that cleaning was an issue to be heard. While I accept the tenant may have had some details in an email dated April 15, 2021, prior to the landlord’s application being made; however, the landlord was required under section 59 of the Act to provide the full particulars of their claim in their application. Further, the landlord did not do a move-out condition inspection report as required by the Act. The tenants deny they left the rental unit unreasonably clean.

### Broken door handle

I find I must dismiss the landlord’s claim for the door handle. The landlord did not provide any details in their application that the door handle was a subject to this dispute.

I also note this was not a detail in the email dated April 15, 2021. I find the landlord failed to provide the full particulars of their claim in their application. Further, the landlord did not do a move-out condition inspection report as required by the Act. The tenant denies they broke the door handle.

#### Appliance repair

I am not satisfied that the tenant caused damage to the control panel of the dishwasher that was by their actions or neglect. This appears to be an internal problem with the control panel, which I find more likely than not, to be a basic repair. The appliance was at least four years old at the time, repairs are the landlord's responsibility under the Act. Therefore, I dismiss the landlord's application for the cost of the repair.

#### Loss of rent for April

Even, if I accept the landlord's evidence that the tenant deny access for showing of the rental unit, which is unsupported by any documentary evidence. I am not satisfied the landlord lost any rent for April 2021. The landlord testified at the hearing the rental unit was not rented for any portion of April 2021; however, that is inconsistent with their email they sent to the tenant on 15, 2021, as on that date they said they had someone living in the rental unit. This leads me to question the credibility of the landlord. Therefore, I dismiss the landlord's claim for loss of rent.

Based on the above, I find I must dismiss the landlord's application without leave to reapply. The landlord is not entitled to recover the cost of the filing fee.

As the landlord had failed to prove their claim. I find the landlord no longer has the authority under the Act to retain the security deposit. Therefore, I Order the landlord to immediately return the tenant's security deposit of \$975.00.

Should the landlord fail to comply with my Order, I grant the tenant a monetary order in the amount of \$975.00.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

#### Conclusion

The landlord's application is dismissed without leave to reapply. The tenant is granted a monetary order for the return of their security deposit.

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: October 29, 2021

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Residential Tenancy Branch