



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: MND, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit, unpaid rent, to keep all or part of the pet deposit and/or security deposit, and recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions.

It was determined that the landlord submitted late evidence upon the tenants and the Residential Tenancy Branch. The landlord sent the evidence to the tenants by registered mail; however, the tenants did not receive it. The tenants indicated that they live in a triplex and it is possible another tenant received it. I accepted the landlord's evidence which was verbally described to the tenants and gave the tenants the opportunity to respond.

### Issue(s) to be Decided

1. Whether the landlord has shown that the tenants damaged the rental unit and if so, the quantum of the damage.
2. Whether the landlord has established that the landlord is entitled to rent for the month of November 2008.
3. Whether the landlord may retain all or part of the tenants' security deposit and/or pet deposit.
4. Award of the filing fee.

### Background and Evidence

Based on the parties' undisputed testimony, I make the following findings with respect to the tenancy. The month-to-month tenancy commenced in March 2008 and ended on October 31, 2008. The monthly rent payable by the tenants was \$1,300.00, payable on the 1<sup>st</sup> day of the month, plus 40 percent of hydro and gas charges. The tenants had paid a \$650.00 security deposit and a \$650.00 pet deposit in February 2008. The tenants kept two cats in the rental unit. A move-in and move-out inspection report were prepared by the landlord and signed by the tenant. The parties were also in agreement that the landlord received written notice from the tenants that they would be vacating the rental unit October 31, 2008 on or about October 14, 2008.

The landlord is claiming for unpaid rent for the month of November 2008. The landlord had shown the rental unit to prospective tenants during the month of October 2008 but has not been able to secure a new tenancy until very recently. The landlord claims that the rental unit remained vacant for the month of November 2008 due to the inadequate notice provided to her by the tenants, the condition of the rental unit, with emphasis on the smell of cat urine, and repairs required in the unit. The landlord acknowledges the there was a verbal discussion with the tenants on or about October 1, 2008 where the tenants stated that they may start looking for another rental unit but that she did not receive written notice until October 14, 2008 as the tenants had not yet secured another rental unit until such time. The landlord did not claim for loss of rent for the month of December 2008.

The tenants were of the position that they verbally told the landlord of their intention to vacate the rental unit in September 2008 because it was too costly and they offered to give her written notice but the landlord told them that it was unnecessary. The landlord denied that she told the tenants that written notice was not necessary. The tenants claim that the landlord was showing the rental unit to prospective tenants as early as October 2, 2008. Emails submitted by the tenants as evidence also indicate that the

landlord had stated that not finding tenants for November was due to not attracting quality tenants and prospective tenants finding other accommodation but there was no reference to the condition of the rental unit. The landlord provided testimony that one prospective tenant she followed up with did mention the “hamster” smell in the rental unit in giving reasons for not renting the unit.

The landlord is seeking damages to the kitchen countertops. The inspection report and the parties agreed that cut marks were made in two sections of the countertops during the tenancy; however, the landlord submitted that the countertops need replacement and the tenants claim the marks were barely visible. The landlord submitted two estimates, one for \$500.00 plus tax and the other for \$695.00 plus tax. The tenants felt the damage was not more than ordinary wear and tear.

The landlord spent \$200.00 to have the carpets cleaned. The parties agreed during the hearing that the landlord had agreed to pay \$50.00 of the carpet cleaning charges. The landlord submitted that the urine odour was remedied after two cleanings, the second cleaning taking place in late November free of charge, and sprinkling deodorizer on the carpet.

The landlord claims that her father spent six hours painting over scuffs and scratches on the walls for a total claim of \$120.00 for labour. The landlord also claimed that she spent approximately \$40.00 on paint although she did not provide a receipt. The tenants claimed that they wanted to repair the wall scuffs and scratches themselves but the landlord would not permit them to do so. The tenants provided copies of emails in support of their testimony.

The landlord paid a cleaner \$73.50 for general cleaning in the rental unit. The tenants agreed to pay this amount.

The landlord claims that the tenants owe \$13.57 for gas, \$42.91 and \$37.68 for hydro. The tenants disputed the gas charge of \$13.57 on the basis that they had already paid for the gas charges but the tenants agreed to the hydro charges. According to the gas bill, the gas charges relate to the period of October 6 to November 5, 2008.

### Analysis

In accordance with section 44 of the Act, the tenancy ended October 31, 2008 when the tenants vacated the rental unit. It is before me to determine whether the landlord is entitled to recover loss of rent for the month of November. In order for the landlord to succeed with a monetary claim, including loss of rent, the landlord must show, based on the balance of probabilities, that

1. the tenants violated the Act, regulations or tenancy agreement
2. the violations caused the landlord to incur damages or loss
3. the quantum of the damage or loss, and
4. the landlord did whatever was reasonable to minimize the damage or loss.

The tenants did not provide written notice to end the tenancy more than one month prior to the tenancy ending. I have considered whether there is sufficient evidence to find that the landlord expressly or implicitly waived this requirement for written notice. I do not find sufficient evidence of a waiver based on the disputed verbal testimony presented to me. Although I am satisfied that the landlord knew that the tenants were looking for another place to live and the landlord proceeded to show the rental unit, I do not find this sufficient to find the landlord had agreed to waive her legal right to at least one-month's written notice. I am also satisfied that the carpets likely smelled of cat urine and that such a smell is highly undesirable to prospective tenants contributing to the landlord's difficulty in securing a new tenants for the month of November 2008. For these two reasons, I find the tenants are responsible for compensating the landlord loss of rent for the month of November 2008.

With respect to the kitchen countertops, I find that there is sufficient evidence to find that there are scratches; however, the extent of the damage is unclear. In other words, the landlord has not sufficiently demonstrated to me that the damage is so extensive that the countertops need to be replaced when I consider the tenants' testimony that the scratches were barely visible. Therefore, I grant the landlord \$50.00 for diminished value of the countertops as I am satisfied that there is at least some minimal damage to the countertops.

With respect to the landlord's claims for painting and paint costs, I prefer the tenants' position that they wanted to repair any wall damage and even asked the landlord for the name of the paint colour but that the landlord informed them that she preferred to do the work herself. Since the tenants were prevented from repairing the walls by the landlord I do not order the tenants to compensate the landlord for her father's labour or the paint that was used and this portion of the landlord's claim is dismissed.

As the tenants agreed to pay general cleaning charges of \$73.50 this amount is awarded to the landlord. As the landlord had agreed to pay \$50.00 towards the carpet cleaning, I award the landlord \$150.00 of the \$200.00 the landlord paid for carpet cleaning.

Upon review of the natural gas charges, I am satisfied that the landlord is entitled to a portion of the bill received in November 2008, except I reduced the landlord's claim to \$10.95 to eliminate the five days of the billing period in November 2008. As the tenants agreed to the hydro charges, the landlord has substantiated an entitlement to \$91.54 ( $\$10.95 + \$42.91 + \$37.68$ ) for gas and hydro.

As the landlord was largely successful in her application, I award the landlord \$40.00 of the filing fee she paid for this application.

In light of the above findings, the landlord is entitled to compensation as follows:

Loss of rent - November 2008	\$ 1,300.00
Damage to countertops	50.00
Carpet cleaning	150.00
General cleaning	73.50
Utilities	91.54
Filing fee	<u>40.00</u>
Total owed to landlord	<u>\$ 1,705.04</u>

The landlord's request to retain the tenants' security deposit and pet deposit, plus accrued interest, in partial satisfaction of the amount owed to the landlord is granted. I note that the landlord made this application within 15 days of the tenancy ending and I credit the tenants with \$1,317.48 for their deposits, including interest. Therefore, the landlord is provided with a Monetary Order in the net amount of \$387.56. The landlord must serve the Monetary Order upon the tenants and may enforce it in Provincial Court (Small Claims) to enforce as an order of that court.

#### Conclusion

The landlord may retain all of the tenants' security deposit and pet deposit, plus accrued interest in partial satisfaction of the amounts owed to the landlord. The landlord is also provided with a Monetary Order in the amount of \$387.56.

December 29, 2008

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Date of Decision

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Dispute Resolution Officer