



# 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 and retention of the security deposit. The landlord was also requesting 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.

### Issue(s) to be Decided

1. Whether the landlord has established an entitlement to a Monetary Order for damages to the rental unit and if so, the amount.
2. Whether the landlord is entitled to a Monetary Order for unpaid rent.
3. Whether the landlord may retain the tenant's security deposit in partial satisfaction of the amounts owed to the landlord.
4. Award of the filing fee.

### Background and Evidence

Upon hearing undisputed testimony of the parties, I make the following findings concerning the tenancy. The one-year fixed term tenancy commenced July 2008. The tenant was required to pay \$2,000.00 on the 1<sup>st</sup> day of every month. The tenant had paid a \$1,000.00 security deposit on or about July 11, 2008. A move-in inspection was performed with the tenant. On December 2, 2008 the landlord personally served a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) upon the tenant. The Notice had an effective date of December 15, 2008. The tenant did not pay the outstanding

rent or dispute the Notice within 5 days of receiving the Notice. The landlord and tenant met and agreed that the tenant could remain in the rental unit if he paid the landlord \$1,000.00 on December 12, 2008 and apply the security deposit to the balance of the rent owed. The tenant provided a cheque for \$1,000.00 dated December 12, 2008; however, the funds were not available on that date due to a delay in the tenant receiving his paycheck. The tenant gave the landlord a \$500.00 cheque December 15, 2008 and indicated in the memo section of the cheque that he was paying rent for December 15 – 21, 2008. The tenant vacated the rental unit on December 19, 2008. The landlord cashed the \$1,000.00 cheque on December 22, 2008.

The landlord testified that she was uncertain as to when the tenant would be vacating the rental unit and tried calling the tenant between December 23 – 26, 2008, but could not reach him. The landlord attended the property on December 27, 2008 and learned from a neighbour that the tenant had moved. The neighbour gave the landlord the tenant's new telephone number. The landlord and tenant spoke on December 28, 2008 whereby the landlord asked the tenant when he was coming to clean the unit. The tenant did not give a definite date. The landlord proceeded to start painting on December 29, 2008 and advertised the rental unit for rent on December 30, 2008 for \$1,700.00 per month. On January 5, 2009 the landlord lowered the asking price to \$1,595.00 and has obtained new tenants. A new tenancy commences February 2009; however, the new tenants have paid \$600.00 to store their belongings in the rental unit in January 2009 and the landlords have reflected the receipt of \$600.00 in their claim for loss of rent for January 2009.

The landlord is seeking unpaid rent of \$500.00 for December 2008 (\$2,000 - \$500.00 received - \$1,000.00 received) and \$1,400.00 for January 2009 (\$2,000.00 - \$600.00 received from new tenants). The landlord is also seeking compensation for repair of damages and cleaning, as follows:

Paint supplies	\$ 60.22
Cleaning products	22.00
Replace two blinds	122.93
Labour (35 hrs @ \$8.00/hr)	<u>280.00</u>
Damages and cleaning	\$ 485.15
Less: bottle deposit	<u>(18.60)</u>
Net claim for damages	<u>\$ 466.55</u>

The landlord explained that the walls needed patching and repainting where they were scraped and a hole in the drywall behind a bedroom door. The landlord did not provide a receipt for the paint supplies. The landlord used her own cleaning products and estimated the cost. The landlord had to replace two blinds but did not provide a receipt to substantiate the cost. The landlord estimated that more than 35 hours were spent cleaning and repairing the rental unit and used minimum wage to estimate the cost of labour. The landlord returned the empty refundable bottles left behind by the tenant and credited the tenant the amount refunded by the bottle depot.

The tenant acknowledged that he failed to pay rent when due; however, the tenant was of the position that he had paid for occupancy up until December 21, 2008 and he did not agree with paying for the last week of December since he did not reside in the rental unit during that time. The tenant acknowledged that the rental unit was in need of 8 – 10 hours of cleaning when he left on December 19, 2009; however, it was his intention to return December 20 and 21, 2008 to clean. A snow storm struck and the tenant was precluded from attending the rental unit until December 22, 2008. The tenant testified that the locks to the rental unit had been changed and they could not gain access to clean the rental unit on December 22, 2008. The tenant did not call the landlord to request access or confirm whether the locks had been changed.

The tenant acknowledged some damage to the walls and agreed to pay \$30.00 for painting supplies. The tenant objected to paying for new blinds as it was the tenant's position that the blinds were old, vinyl and broke due to the cold and condensation around the windows. The tenant objected to paying the landlord rent for January 2009 as the tenant was of the position that the landlord did not obtain new tenants until the rent was lowered to a reasonable amount. The tenant provided evidence that the landlord had initially advertised the rental unit in early December for \$2,200.00 per month. Also an issue for the tenants is that they had requested release from the fixed term tenancy months prior to December as they found the rent obligation too high and they were having trouble affording it; however, the landlord refused their request.

The landlord denied the tenant's allegations that the locks were changed. Upon enquiry, the landlord testified that the damaged blinds were metal and one was only one year old and the other blind was approximately three years old. The landlord testified that her son placed the ad in early December without her knowledge and the landlord agreed the asking rent was too high in that advertisement. The landlord explained that she did not place an advertisement until December 30, 2008 as she was unsure when the tenants would actually be vacating.

### Analysis

Upon review of the tenancy agreement, I find that the tenants were bound to pay rent in the amount of \$2,000.00 per month until July 31, 2009. The Act permits a fixed term tenancy to end where a tenant violates a material term of the tenancy agreement, such as paying rent; however, that does not relieve the tenant from his obligation to pay rent as required by the contract during the term of the fixed term. Where a tenancy ends due to a violation by the tenant and the landlord is seeking compensation for loss of rent, the landlord has a statutory obligation under section 7 of the Act to do whatever is reasonable to minimize the loss of rent. The question at issue in this case is: did the landlord do whatever was reasonable to minimize the loss of rent?

Upon review of the Notice to End Tenancy, the tenancy ended December 15, 2008 yet before December 15, 2008 arrived, the parties negotiated continued occupation of the unit. Initially, the occupation was to continue until the end of December 2008; however, when it was discovered that the funds were not available to cash the \$1,000.00 cheque, the parties had further discussion and this is where the parties provide different understandings of when the tenant was to give up occupation of the rental unit. The tenant was of the belief that he would give up occupation on December 21, 2008 but the landlord expected that the tenant would remain in the rental unit past December 21, 2008.

There is no doubt in my mind that the landlord could not have been expected to find new tenants starting December 22, 2008 given the sequence of events described to me and the tenants are responsible for paying rent for the month of December 2008.

With respect to loss of rent for January 2009, even if the landlord had firmly believed the tenant would be in occupation of the rental unit until December 31, 2008 as originally agreed, I find that waiting to advertise until December 30, 2008 insufficient to try to find new tenants for January 1, 2009. Rather, I find that the landlord should have begun advertising much earlier in order to make a reasonable effort to re-rent the unit. Although there is evidence of an advertisement placed December 3, 2008 the landlord denies she placed the advertisement. Even if the landlord had placed the advertisement on December 3, 2009 the asking rent was excessive and unlikely to yield interest from prospective tenants. Accordingly, I do not find that the landlord did whatever was reasonable to minimize the loss of rent for January 2009 and I do not award the landlord for loss of rent for January 2009.

With respect to the landlord's claims for damages, where a claim for damages is made, the party making the claim must prove the quantum of their claim, among other things.

Since the landlord did not provide receipts or other evidence to substantiate the cost of the paint and blinds I only award the landlord the amount agreed to by the tenant, which was \$30.00 for paint. Although the landlord offered to submit the receipts after the hearing, I cannot consider evidence received after a hearing and not served upon the other party. The party making the claim has the obligation to ensure all of the evidence they intend to rely upon is provided five days before the hearing.

Since the landlord used her own cleaning products to clean the rental unit, I accept the estimated cost of those products. Since the tenants acknowledge that the rental unit was in need of cleaning, the landlord is awarded \$ 22.00 for cleaning products.

The landlord's claim for time and labour of 35 hours includes: painting, cleaning, carpet cleaning and blind replacement. I approve of the labour incurred for all of these items except for the time spent on replacing the blinds. The tenant alleged that the blinds were older and vinyl. The landlord was of the position that the blinds were newer and metal. The landlord has the burden of proof as the landlord is the party seeking compensation. Without other evidence, the disputed verbal testimony is not sufficient for me to find that the blinds that were damaged were metal and newer than that estimated by the tenant. Older vinyl blinds, as described by the tenant, would not have any significant remaining value and would likely require replacement anyways. Therefore, I do not award the landlord labour to replace the blinds as I am not sufficiently satisfied the tenants are responsible for damaging the blinds. I award the landlord 30 hours @ \$8/hr or \$240.00 to clean and paint and repair the walls.

With respect to the tenant's claim that the tenants could not clean the unit because the landlord changed the locks, I find the disputed testimony insufficient to satisfy me that was the case. I have also considered that the tenant did not make any effort to contact the landlord and advise the landlord they were having trouble accessing the rental unit. Therefore, I am satisfied the landlord took the necessary steps to clean and repair the

rental unit in order to make the unit presentable for prospective tenants. The landlord can not be expected to wait until such time it is convenient for the tenant to return and clean the rental unit.

I make no determination concerning the return of the empty bottles as I consider that to be abandoned property with a value of less than \$500.00.

As the landlord has been successful in establishing that the tenant owed the landlord for unpaid rent and damages, I award the landlord the filing fee paid for this application.

In light of the above findings, the landlord has established an entitlement to recover the following amount:

Unpaid Rent – December 2008	\$ 500.00
Paint costs	30.00
Cleaning products	22.00
Time and labour	240.00
Filing fee	<u>50.00</u>
Amount owed to landlord	<u>\$ 842.00</u>

The landlord is authorized to retain \$842.00 from the tenant's security deposit and must refund the tenant the balance remaining, plus accrued interest, forthwith. I calculate that the tenant is entitled to receive a refund of \$165.13 including interest of \$7.13.

The tenant is provided with a Monetary Order in the amount of \$165.13 to ensure the landlord refunds the balance of the security deposit. To enforce the Monetary Order the tenant must serve the Monetary Order upon the landlord and may file it in Provincial Court (Small Claims).

The landlord referred to making a future application for the decrease in rent during the remainder of the fixed term. For clarity, this decision relates to the loss of rent for the month of January 2009 and does not preclude the landlord from making another application for the months of February through July 2009.

### Conclusion

The landlord was successful, in part, and established an entitlement to recover \$842.00 from the tenants. The landlord is authorized to retain \$842.00 from the security deposit and must refund the balance of \$165.13 to the tenant forthwith. The tenant was provided a Monetary Order in the amount of \$165.13 to ensure compliance with this decision.

January 21, 2009

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Date of Decision

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Dispute Resolution Officer