



# Dispute Resolution Services

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

## **Decision**

**Dispute Codes:** MND, MNR, MNSD, MNDC, FF

## **Introduction**

This hearing dealt with an application from the landlords for a monetary order as compensation for costs associated with repairs to damage to the unit, unpaid rent and utilities, retention of the security deposit in partial satisfaction of the claim, compensation for damage or loss, and recovery of the filing fee. Both parties, including the agent for the landlords, participated in the hearing and gave affirmed testimony.

## **Issue to be Decided**

- Whether the landlords are entitled to a monetary order under the Act

## **Background and Evidence**

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on June 1, 2007. Rent in the amount of \$1,250.00 was payable in advance on the first day of each month; by way of verbal agreement reached between the parties the rent was actually paid on or about the 7<sup>th</sup> day of each month. A security deposit of \$625.00 was collected at the start of tenancy.

The landlords issued a 1 month notice to end tenancy for cause dated November 6, 2008. The date shown on the notice by when the tenants must vacate the unit is December 7, 2008. The tenants actually vacated the unit on or about November 28, 2008.

No formal move-in condition inspection or report was undertaken at the outset of tenancy. Neither was a move-out condition inspection or report completed at the end of tenancy. However, the parties agree that the unit was in very good condition at the start

of tenancy. The landlords submitted into evidence a package of pictures taken of the unit after the tenants vacated, and an itemized list of costs associated with cleaning and repairs required before the unit could be re-rented. New tenants were found for the unit effective December 6, 2008.

### **Analysis**

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, and provides as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

In order to decide the issues in this dispute, I have carefully weighed the testimony and documentary evidence (including photos) presented by the parties. A test for assessing

credibility is set out in *Faryna v. Chorny* [1952] 2 D.L.R. 354 (BCCA). In part, the test reads as follows:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the witness carried conviction of the truth. The test must reasonably subject the story to an examination of its consistency with the probabilities that surround the story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of probabilities which a practical and informed person would readily recognize in that place and those circumstances...(pp.356-357).

Based on the documentary evidence (including photos) and testimony of the parties, I find that landlords have established a claim as follows:

\$201.61 - loss of rental income calculated on a pro-rated basis for the period December 1 to 5, 2008 [ $(\$1,250.00 \div 31) \times 5$ ];

\$360.05 - unpaid utilities (hydro & gas)

\$1,603.35 - repair and painting of walls

\$145.60 - replacement of 3 doors

\$291.20 - repair / replace blinds & screens

\$189.00 - carpet cleaning

\$400.00 - compensation limited to the assessed value of repair to fridge

\$857.15 - professional clean up and removal of furnishings & garbage

\$490.00 - intensive professional cleaning within unit

\$50.00 - the filing fee for this application.

Total: \$4,587.96

As the following are only estimates and are not costs that have presently been incurred by the landlords, with leave to reapply I dismiss the landlords' claim for \$175.00 ("Pressure Washing") and \$949.20 ("Sundeck replace vinyl - that is painted black and burnt").

In summary, as for the monetary order, I therefore find that the landlords have presently established a claim of \$4,587.96. I order that the landlords retain the security deposit of \$625.00 plus interest of \$14.95 and I grant the landlords a monetary order under section 67 of the Act for the balance due of \$3,948.01 (\$4,587.96 - \$639.95).

### **Conclusion**

I hereby grant the landlords a monetary order under section 67 of the Act for **\$3,948.01**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: April 16, 2009

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Dispute Resolution Officer