



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, (MND), (MNDC), MNSD, FF, SS

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenants' security deposit. Although the Landlord did not select boxes on her application to make a claim for damages to the rental unit and for compensation for damage or loss under the Act or tenancy agreement, it is clear by her description for other damages that she inadvertently omitted these. Consequently, the Landlord's application is amended to include these claims.

### Issues(s) to be Decided

1. Are there arrears of rent and if so how much?
2. Is the Landlord entitled to compensation for damages and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

### Background and Evidence

This tenancy started on October 1, 2006 and ended on September 11, 2008. Rent was \$765.00 per month. The Tenants paid a security deposit of \$382.50 by way of 4 instalments. On July 31, 2008, Ms. Ferguson, who was the caretaker, gave her resignation. On July 31, 2008, the Landlord gave the Tenants a One Month Notice to End Tenancy which indicated an effective date of August 31, 2008, however the Landlord advised the Tenant that the effective date would be September 30, 2008 due to the method of service.

The Tenants said they moved out on September 9, 2009 and advised the new caretaker, Doug McKinnon. They said they contacted Mr. McKinnon and arranged to do a move out condition inspection on September 11, 2008. The Tenants said they agreed to pay rent for over-holding for 11 days (in the amount of \$324.13) and for carpet cleaning in the amount of \$90.00. The Tenants also said they agreed to offset part of this amount with their security deposit and accrued interest and paid the balance of \$34.13.

The Landlord claimed that although Mr. McKinnon was the duly authorized agent of the Landlord and authorized to do move out inspections on her behalf, he was not authorized to make a deduction from the rent for September, 2008 and should have charged the Tenants a late fee of \$25.00 for September, 2008 rent as well as painting charges of \$100.00. Mr. McKinnon gave evidence that he relied on Ms. Ferguson as to what charges to insert on the condition inspection form and admitted that he should have checked first with the Landlord.

The Landlord said that she believed the Tenants would be staying for the month of September, 2008 because they applied for dispute resolution to set aside the One Month Notice. The Landlord also said the Tenants did not pay rent for September, 2008 when it was due and as a result she served them with a 10 Day Notice to End Tenancy on September 3, 2008. The Landlord said she was notified on September 7, 2008 by Mr. McKinnon that Tenants appeared to be moving out. The Landlord claimed that the new caretaker did not move in to the rental unit until October, 2008. Consequently, the Landlord sought unpaid rent of \$765.00 for the full month of September, 2008 as well as a \$25.00 late payment fee as provided for by the tenancy agreement (a copy of which was not provided as evidence at the hearing).

The Landlord also claimed that she agreed the Tenants could paint cupboards and trim in bold colors provided that they returned them to the original colors at the end of the tenancy. The Tenants argued that the Landlord agreed to use the rental unit as a test suite to see if they could charge more rent by making certain upgrades including specialized painting. The Tenants claim that none of the tenants of the other units were expected to return the units to a neutral color at the end of their tenancies. The Tenants claim the Landlord authorized the colors and never said anything about having to repaint at the end of the tenancy. The Tenants argued that the rental unit has not been repainted. This was confirmed by Mr. McKinnon who currently resides there and who claimed he has no present intention of changing the colors.

The Tenants took no issue with a carpet cleaning fee of \$90.00. The Tenants claimed that Mr. McKinnon had done move out inspections previously and was authorized by the Landlord to do one on September 11, 2008. Consequently, the Tenants argued that the Landlord should not be allowed to set aside their agreement on the grounds that their agent did not have proper instructions or training. The Landlord argued that there was no agreement but rather that the Tenants took advantage of Mr. McKinnon by hastily scheduling their move out and misleading him about the proper deductions.

## Analysis

Section 45 of the Act requires a Tenant to give one month's clear notice they are ending the tenancy. The Tenants disputed the One Month Notice which would not have taken

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effect until September 30, 2008 (and which was subsequently set aside in a Decision dated September 5, 2008). As the tenancy had not ended, the Tenants had an obligation to give the Landlord one clear month's notice or be held liable for a loss of rental income that resulted by failing to do so. Therefore, in the normal course the Landlord would have been entitled under s. 45(1) of the Act to recover the full amount of rent for September, 2008. However, I find that the Landlord's agent, Mr. McKinnon agreed at the end of the tenancy that the Tenants' liability would be limited to 11 days rent for over-holding and \$90.00 for carpet cleaning.

I do not find that there was any unconscionable act on the part of the Tenants that would warrant setting this agreement aside. In particular, I find that Mr. McKinnon did not obtain the prior consent of the Landlord to make such an agreement because he did not know at the time that he was required to do so. I find that Mr. McKinnon only discovered at a later date that the Landlord was seeking other amounts. As long as Mr. McKinnon was acting within the scope of his authority as the Landlord's agent, the Landlord cannot repudiate her agreement with the Tenants and hold them liable for her agent's failure to carry out his duties properly. Consequently, the Landlord's application is dismissed and the Parties' agreement (as set out in the move out condition inspection report dated September 11, 2008) will remain in effect.

In their submissions, the Tenants claimed that the previous decision in file #239987 failed to address their argument that they were served with an improper notice. The Tenants also claimed that they were unable to offset the filing fee they were ordered to deduct from future rent. This is not a matter that can be dealt with in these proceedings but rather is a matter for which the Tenants must apply for correction and clarification under the previous proceedings.

## Conclusion

The Landlord's application is dismissed. 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: May 07, 2009.

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Dispute Resolution Officer