



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes

For the tenant MNDC, MNSD, FF, O

For the landlord MND, MNR, MNSD, MNDC, FF

### Introduction

This decision deals with two applications for Dispute Resolution, one brought by the tenant and one brought by the landlord. Both files were heard together.

The landlord seeks Monetary Orders for damage to the rental unit, for unpaid rent, for money owed or compensation for damage or loss under the *Act*, to keep all or part of the security and pet damage deposit and to recover the filing fee. The tenant seeks a Monetary Order for money owed or compensation for damage or loss under the *Act*, for the return of the security and pet damage deposit, and for an Order concerning legal issues due to the rental unit not being a legal suite and to recover the filing fee.

The landlord served the tenant by registered mail on April 16, 2009 with a copy of the Application and Notice of Hearing. The tenant served the landlord by registered mail on April 17, 2009 with a copy of the application and a Notice of the Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing. The tenant claimed that the landlord did not give her evidence to him before the start of the hearing. Therefore, the landlords written evidence will not be heard and oral submissions only will be accepted at the hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. The tenant claimed that the landlord did not give her additional evidence to him before the start of the hearing. Therefore, the landlords' additional evidence will not be heard and oral submissions only will be

accepted from the landlord at the hearing. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

## Issues(s) to be Decided

- Is either party entitled to compensation for damages and if so how much?
- Is the tenant entitled to the return of his security and pet damage deposit?
- Is the landlord entitled to retain the tenants' security and pet damage deposit?
- Has the landlord proved the tenant has caused damage to the suite?
- Is the landlord entitled to recover unpaid rent?
- Is the tenant entitled to any Orders concerning the suite?
- Is either party entitled to recover their filing fee?

## Background and Evidence

This tenancy started on March 01, 2009 the tenant moved into the suite on March 06, 2009. Rent was agreed at \$775.00 per month payable on the 1<sup>st</sup> of each month. This was a fixed term tenancy for six months ending on August 31, 2009. The tenant paid a security deposit of \$387.50 and a pet damage deposit of \$200.00 on February 25, 2009. The tenant moved out of the suite on March 31, 2009.

The tenant had some issues with the suite after he moved in. He claims that there was a carpenter ant infestation and the front door would not lock securely, one of the stove elements did not work and the bathroom sink leaked. The tenant confirms that the landlord did replace the front door within the first 10 days and she did send a maintenance man around to try to repair the leaking sink. The tenant claims he told the landlord about the stove element but this was not repaired and he admits that he did not inform the landlord of the ant infestation.

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The tenant claims that the rental agreement included cable services but when he contacted the cable company to hook up the phone line they informed him that the cable service was only for the unit upstairs and disconnected his service. Out of the 23 days the tenant lived in the suite he only had cable service for nine days. The tenant is also claiming loss of quiet enjoyment as the landlord entered his suite four times to carry out repairs, once with written notice and the other three times he gave his permission for her to enter over the telephone.

The tenant gave the landlord notice to vacate the suite on March 26, 2009. He did not give 10 days Notice and moved out on the March 31, 2009. The tenant asked the landlord to sign a mutual agreement to end the tenancy however the landlord refused to do this. The tenant gave written agreement for the landlord to retain some of his deposit to cover carpet cleaning costs. The tenant also claims that the suite is not a legal suite. However, this claim will not be heard at today's hearing as it has no bearing on the issues claimed. The tenant is claiming \$775.00 for the return of his March rent; the return of the security and pet damage deposit less \$75.00 for carpet cleaning; \$250.00 for loss of quiet enjoyment; \$250.00 for stress and anxiety due to inability to secure the front door; \$104.95 for loss of one months cable serve and grief of two weeks of no cable service.

The landlord disputes the tenants claim. She testifies that the tenants did not inform her of the ant problem so she could have taken steps to rectify this. The landlord claims that the tenant did not tell her about the broken element and if he had she would have had this replaced. The plumbing issue in the bathroom was dealt with by sending in the maintenance man to fix the leak. This was not completed as the tenant moved out before completion and it has since been rectified. The tenant was informed that the front door was being replaced on March 18, 2009 and work was completed on that date. The tenant did lose the cable service for a few days and the landlord contacted the cable

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company. She was told that the tenant had applied to upgrade the service to HDTV and this was not included in the tenancy agreement. After she had spoken to the cable company they returned to reconnect the tenants' standard service.

The landlord had to enter the tenants' suite on occasions to complete repairs with the maintenance man. The landlord did confirm that she gave 8 days notice on one occasion and on the other occasions she phoned the tenant to ask permission to enter the suite.

The landlord confirms the tenants' testimony that he called her on March 26, 2009 to give notice to end the tenancy. She acknowledged he was leaving and arranged to complete a move out condition inspection report with him. The landlord testifies that when the new door was fitted to the suite she asked the tenant to return the keys for the old door. It was at this time that the tenant told the landlord that he had entered the upstairs suite to reset the breakers for his suite after they had blown. The tenant did not contact the landlord but entered the upstairs suite illegally with a key that fitted both locks. The landlord states that the tenant upstairs is very upset by the tenants' actions and feels she should be compensated for entering her suite illegally. The landlord has notified the police about this matter.

The landlord sent the tenant an e-mail detailing that they are willing to accept the tenants Notice to End Tenancy but not agreeing to cancel the lease or absolve the tenant of any costs incurred by his late notice. The landlord agreed that if she could re-rent the suite then the tenant would only be responsible until that date for rent.

The landlord testifies that she attempted to re-rent the suite and placed an advertisement in the paper on March 26, 2009. The suite was re-rented for June 01, 2009. The tenancy agreement states that the tenant must clean the carpets before moving out and the tenant has confirmed he will pay this cost.

The landlord testifies that the tenancy agreement also contained a clause that the tenant would not put anything in the toilet other than human waste and toilet paper. After the tenant moved out the sump was cleaned and the landlord states that there was sand and Kleenex in the system.

The landlord is claiming: Unpaid rent \$1,550.00; carpet cleaning \$63.00, plumbing costs \$157.50; personal damages to upstairs tenant \$500.00.

## Analysis

I find that the tenant did not notify the landlord about the carpenter ants in the suite so she could have taken the necessary action to prevent this. I prefer the landlords' testimony that the tenant did not notify her of the broken element on the stove as she has taken all other necessary steps to repair any other damage to the suite after being notified. I find that the landlord did take the required steps to complete repairs to the leaking sink and replace the front door in a reasonable time frame. Therefore, this section of the tenants' application is dismissed.

I find that the tenant has not suffered unreasonable loss of quiet enjoyment due to the landlord entering his suite to carry out repairs as the landlord is required under the act to provide and maintain rental property that is in a state of decoration and repair pursuant to s. 32 of the *Act*. Without access to the rental suite the landlord would not have been able to comply with this section of the *Act*. I find that the landlord acted within a reasonable time frame to carry out the replacement of the front door and the tenant was aware of this from the outset of the rental agreement. Therefore, I dismiss these sections of the tenants claim.

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I accept that the tenant was without cable services for a period of a few days. As there is inconsistencies in the amount of days and the tenant has not provided any evidence as to the number of days I will accept that this was for a period of one week. I do not believe that the tenant suffered stress because of the loss of this service for one week. Therefore, the tenant will be compensated for the loss of this service to the amount of **\$13.73**.

The tenant entered into a fixed term tenancy for six months. As the tenant gave the landlord notice to end the tenancy after 26 days and moved out at the end of the first month the tenant is required to have paid the landlord for this months rent. Therefore, I dismiss this section of the tenants claim. The tenant did not give the required notice to the landlord. The landlord was unable to re-rent the suite until June 01, 2009. Therefore, I uphold the landlords claim for loss of income for April and May, 2009 for **\$1,550.00**. As the landlord has been successful in this section of her claim she is entitled to retain the tenant's security and pet damage deposit in partial settlement of the loss of income.

The tenant has agreed in writing to the landlord deducting the cost of cleaning the carpet which the landlord confirms is **\$63.00**.

I find that the landlord has provided insufficient evidence to support her claim for the costs of the plumbing service for the sump pump. There is no evidence to show that this was cleaned prior to the tenant moving into the suite and insufficient evidence to show what the plumber found in the pump to support the landlord claim. Therefore, I dismiss this section of her claim.

The landlord has provided insufficient evidence to support her claim for \$500.00 to compensate the tenant upstairs for the tenant entering her apartment. The *Residential*



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*Tenancy Act* does not allow tenants to seek compensation against each other.  
Therefore, I have no jurisdiction in that matter.

As the landlord has been mostly successful in her claim she is entitled to recover the cost of filing her application of **\$50.00**. A monetary Order will be given for the following amount:

Loss of income for April and May	\$1,550.00
Filing fee	\$50.00
Less compensation to tenant for loss of cable	(-\$13.73)
Less security and pet damage deposits	(-\$587.50)
Total amount due	<b>\$1,061.77</b>

## Conclusion

Most of the tenants application is dismissed without leave to reapply with the exception of his claim for loss of cable service.

I HEREBY FIND in favor of the majority of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,061.77**. The Order must be served on the tenant and is enforceable through the Provincial Court as an Order of that Court.

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: June 12, 2009.

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Dispute Resolution Officer