



# Dispute Resolution Services

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

## **Decision**

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

## **Introduction**

This hearing dealt with the landlord's application for a monetary order for damage to the unit, money owed as compensation for damage or loss under the Act, regulation or tenancy agreement, retention of all or part of the security deposit, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

## **Issues to be decided**

- Whether the landlord is entitled to any or all of the above

## **Background and Evidence**

Pursuant to a written residential tenancy agreement, the tenancy began on July 1, 2006. Near the time when tenancy ended, rent in the amount of \$1,500.00 was payable on the first day of the month. A security deposit of \$700.00 was collected on May 17, 2006. A move-in condition inspection and report were completed on June 30, 2006.

The landlord issued a 1 month notice to end tenancy for cause dated April 15, 2009. The date shown on the notice by when the tenant must vacate the unit is May 31, 2009. Subsequently, by letter dated April 30, 2009, the tenant provided the landlord with 1 month notice of her intent to end tenancy effective at the end of May 2009. A move-out condition inspection and report were completed on May 31, 2009.

The agent representing the property owners during the move-out inspection at the end of tenancy, was not the same agent or from the same property management firm as the agent who represented the property owners during the move-in condition inspection at the outset of tenancy.

After the end of the subject tenancy on May 31, 2009, new renters were found for the unit effective from July 1, 2009. The landlords' agent takes the position that cleaning and repairs required in the unit precluded the property from being re-rented before that time. A summary of compensation sought by the landlord is as follows:

\$163.65 – materials required for repair of holes in walls

\$4.42 – replacement of sash rod

\$177.10 – costs associated with materials and supplies to replace pine bi-fold door, clips for blind valences and sheer for the large bedroom on the main floor

\$38.01 – replacement of missing sheers on front and basement door windows

**\$94.08** – **replacement of living room blind\*** (\*not disputed by the tenant)

\$115.07 – door for front basement bedroom & basement front bedroom blind

\$242.21 – replacement of basement carpet (because of cigarette smell)

\$41.44 – replacement / repair of 2 garage window panes

\$200.00 – labour associated with all of the above

\$73.50 – ozone machine to remove cigarette smell

\$117.51 – water utilities (**\$111.91\*** & interest of \$5.60) (\*not disputed by the tenant)

\$1,500.00 – loss of rental income for June 2009

\$50.00 – filing fee

Total: \$2,816.99

Items from the above claim which are not disputed by the tenant include the following:

**\$ 94.08** – replacement of living room blind

**\$111.91** – water utilities (excluding interest of \$5.60)

Total undisputed: \$205.99

Balance of claim to be decided: \$2,611.00 (\$2,816.99 - \$205.99).

### **Analysis**

Neither the property owners nor the property management agent representing the owners at the outset of this tenancy participated in the hearing.

Based on the documentary evidence including pictures, and testimony of the parties in attendance to the hearing, I find that the landlord has established entitlement to a monetary order in the total amount of \$377.81. This is comprised as follows:

\$205.99 – the undisputed amounts shown above

\$ 81.82 - ½ the cost of materials required for repair of holes in walls

\$ 40.00 - 4 hours @ \$10.00 / hour for labour

\$ 50.00 - the filing fee for this application.

Total: \$377.81

I order that the landlord withhold \$377.81 from the security deposit and return the balance to the tenant of \$322.19 plus interest of \$23.45 (total: \$345.64).

I hereby dismiss the following aspects of the landlord's claim:

\$81.83 – ½ the cost of materials required for repair of holes in walls. I find there is insufficient evidence to demonstrate that these repairs were required for remedial work that was entirely beyond what may be required as a result of normal wear and tear. While pictures submitted into evidence show walls with an abundance of nail and/or screw holes in need of patching and repainting, the move-in and move-out condition inspection reports both variously record the existence of nail holes, nail marks and paint chips.

Residential Tenancy Policy Guideline # 1 addresses **Landlord & Tenant – Responsibility for Residential Premises**, and provides under “Nail Holes” in part, as follows:

Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord’s reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

Residential Tenancy Policy Guideline # 37 identifies the useful life of interior paint as 4 years. It is understood that paint was not new when the tenant moved into the unit, and she resided there for approximately 3 years.

\$4.42 – replacement of sash rod. There is no reference to the sash rod on either the move-in or move-out condition inspection report.

\$177.10 – costs associated with materials and supplies to replace pine bi-fold door, clips for blind valences, and sheer for the large bedroom on the main floor. There is insufficient evidence to refute the tenant’s claim that these items were nowhere near new when she moved into the unit, that she had cared properly for the items, and that any breakage or deterioration was a function of their useful life, as well as normal wear and tear. Further, the move-in and move-out condition inspection reports are insufficiently specific with regard to the “before and after” condition of any of the above.

\$38.01 – replacement of missing sheers on front and basement door windows. There is insufficient evidence to refute the tenant’s assertion that there were no sheers on either of these windows when she moved into the unit.

\$115.07 – door for front basement bedroom & basement front bedroom blind.

There is insufficient evidence to refute the tenant's claim that this door was in a state of disrepair when she moved into the unit, and that during the course of normal wear and tear it became unhinged and was set aside in the closet. As for notations about doors on the move-out inspection report, comment is limited to "3 Missing slats in dr." for "Bedroom 3."

Where it concerns notations on the move-out condition inspection report about blinds, they are limited to the Living Room where it is noted "Being Replaced."

As stated earlier, the tenant has agreed to withholding of \$94.08 from the security deposit with respect to this cost. There are otherwise no notations on the move-out condition inspection report pertinent to blinds needing to be either repaired or replaced.

\$242.21 - replacement of basement carpet (because of cigarette smell). While the parties take opposing positions as to whether or not smoking occurred in the unit, there is no provision in the residential tenancy agreement which prohibits smoking inside the unit. Further, the tenant claims that she had the carpet professionally cleaned at the end of tenancy.

Finally, it is noted in Residential Tenancy Policy Guideline # 37, that the useful life of carpets is deemed to be 10 years. The age of the subject carpets is unknown. However, it is understood that they were not new when the previous tenants moved into the unit, and they were not replaced during the 4 years while the previous tenants resided in the unit, or during the approximate 3 year period while the subject tenant lived in the unit.

\$41.44 – replacement / repair of 2 garage window panes. The move-in condition inspection report provides that there was "one broken window." The move-out condition inspection report notes "same."

\$160.00 – labour associated with all of the above. In summary, there is insufficient evidence to support the position that remedial work required in the

unit at the end of this tenancy was principally the result of the tenancy, and was exclusive of normal wear and tear.

\$73.50 – ozone machine to remove cigarette smell. As earlier noted, there is no provision in the residential tenancy agreement prohibiting smoking in the unit.

\$5.60 – the interest calculated on water utilities. There is no evidence of documentary support for this claim.

\$1,500.00 – loss of rental income for June 2009. Residential Tenancy Policy Guideline # 3 addresses Claims for Rent and Damages for Loss of Rent, and provides in part:

Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

Further to comments made above under “\$160.00 – labour associated with all of the above,” the tenant gave the landlord one month’s notice of her intent to vacate the unit; there was an opportunity for the landlord to undertake a preliminary inspection of the unit prior to the final move-out inspection, prepare to undertake the necessary remedial work which was not extensive, and to advertise for new renters.

## **Conclusion**

Following from all of the above, I hereby order that the landlord may withhold \$377.81 from the tenant’s security deposit. Further, I hereby order the landlord to pay the balance of the security deposit to the tenant in the amount of \$322.19, plus interest of \$23.45, for a total of **\$345.64**.

DATE: August 24, 2009

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Dispute Resolution Officer