



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes            MND, MNR, FF

### Introduction

This matter dealt with an application by the landlord for a Monetary Order for unpaid rent and utilities, for damages to the rental unit, and to recover the filing fee for this proceeding.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the tenant by registered mail on July 02, 2009. The tenant confirmed she had received them.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Has the landlord provided evidence of the actual amount required to compensate him for the claimed loss or to rectify the damage?
- Are there arrears of rent and utilities and if so, how much?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?

### Background and Evidence

This tenancy started on November 19, 2008 and ended on April 01, 2009. This was a month to month tenancy for a short term rent while the landlords were working overseas. Rent was agreed at \$500.00 per month and the utilities bills were to be paid by the tenants although they

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remained in the landlords name due to the short term nature of the agreement. The landlord did not request a security deposit and did not complete a move in or move out condition inspection report.

The landlord testifies that the tenants signed a tenancy agreement which states that they were responsible for the utility bills. This agreement also states that the tenants were able to use the cut wood for the fire place at an additional charge of \$100.00 per month. The agreement states that the hot tub was decommissioned and had been winterized and the piano was not to be used. Some of the landlord's belongings were stored in the basement and a sign was posted on the doors stating that this area was out of bounds. The agreement did state that the tenant could use the food in the freezer. The tenancy agreement states that the tenants would be given 30 days notice to vacate the rental unit when the landlord returned from overseas. The original agreement was for one tenant and this was revised when the tenants' partner lived there and he was added to the agreement.

The landlord testifies that the tenant became libel for the rent from December 01, 2008 and that he allowed her to move in on November 19, 2008 until December 01 without payment of rent. In January, 2009 the landlord gave the tenants a reduction in rent of \$400.00 for the work they completed for the landlord when a storm caused a tree to fall on a neighbouring rental unit which the landlord owned. The tenants paid rent for December and the remainder of Januarys rent. They also paid rent for February, 2009. On February 28, 2009 the landlords' agent (son) gave the tenants 30 days notice to vacate the property. After meeting with the tenant this was revised and on March 03, a 60 Day Notice to vacate was issued by e-mail. The landlord testifies that the tenants did not pay rent in March. The landlord also testifies that the tenants owe utilities. They have not paid the utility bills since they moved in. The hydro bills for December 18 to February 17 of \$985.79, February 18 to March 31 of \$740.22 and April 01 to April 20 of \$435.65. Star choice services have not been paid for January, February and March of \$164.61. Telus charges for January, February and March of \$266.18.

When the landlord returned from overseas he visited the property on March 19 and noticed that there was some damage to a sliding exterior door, there was a significant amount of dog feces

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in the yard and the barn which had been sealed shut and not accessible to the tenants had been broken into and the landlords tools had been used. The landlord does credit the tenants with their efforts to vacate the property within the 60 days and states that they did move out on April 01, 2009.

During the tenancy the landlord discovered that the tenants had allowed their daughter and some additional pets to move in without permission. Upon entering the premises the landlord found that the tenants had disregarded the tenancy agreement conditions as to the use of the hot tub and the piano. The tenants had entered the downstairs areas which were closed off for storage of the landlord's personal belongings and these belongings had been moved to a small area. Four cords of firewood had been used, the fireplace had been used to smoke salmon, a new duvet had been used to wrap an injured dog, painting had been completed without permission, their personal phone had been used, a sliding door was damaged, a storage door was damaged, the chimney had to be swept due to fish smells, the stove was left very dirty and damaged and some items were missing from the storage area such as china and silverware. The landlord found that the tenant's dogs had caused some damage in the downstairs area with scratching on the walls and dog urine on the carpet. The landlord has reduced his claim for damages and loss to the amount of \$4,960.97.

The tenants dispute much of the landlords' claims. The tenants testify that when they moved in they were told the Hydro would be approximately \$150.00 per month and due to a storm which damaged the sliding door causing it to fall out they were left with higher hydro bills. They state they informed the landlords' agent who said his dad would deal with it when he returned. They claim they were told the costs for the Star Choice and Telus would also be around \$50.00 per month each. The tenants testify that they had a very good relationship with the landlords' son who was acting as landlord in his fathers' absence. He gave them permission to use the bedding and to enter the landlords' storage area to access some exercise equipment. He also gave them permission to use the hot tub and for the tenants daughter to move in to the property. The tenant's testify that they did carry out some painting in a professional manner to cover some crayon marks on the wall which were there when they moved in. They also painted a floor in the basement and rolled up the carpet. They testify that the dogs were well trained and did

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not cause any damage to the home and the dog feces in the yard is caused by neighbourhood dogs. The tenant's testify that when they lost power they did smoke some fish over the fire place and they did use the duvet to wrap their dog when she was bitten by another dog. The tenant states she cleaned the whole house before they left and it was in better condition then when they moved in. The tenant testifies that the dog did do some damage to a door but they had another door custom made and the landlord refused them permission to fit this after they had moved out. They also state that they wanted to replace the four cords of firewood but again the landlord refused them permission.

The tenants claim that as the landlord gave them two months notice to end the tenancy they did not pay rent for March, 2009 as this was the amount they were entitled to in compensation for the Notice as per the tenancy Act.

## Analysis

By the landlords own admission no move in or move out condition inspection reports were completed to determine the condition of the premises. Therefore, I will make a judgement based on the evidence and testimony presented at the hearing. I prefer the evidence of the landlord to some of the damage caused by the tenants for example, the sliding door and the door in the basement. However, as the tenants did have another door custom built to replace the basement door and the landlord refused to allow them to fit it I find that the landlord should bare the cost of this door and find he is entitled to recover the cost for repair for the sliding door of \$341.76. I find the tenants are libel for the costs for the duvet which they used to wrap their injured dog of \$100.00. I find the tenants are libel for the costs incurred for cleaning the chimney due to them having smoked fish in it of \$85.00. I also find the landlord is entitled to receive costs for cleaning although this amount has been reduced to \$150.00 as he has not provided sufficient evidence to support his claim for \$250.00.

From the evidence presented I find that the landlord only gave permission for the tenant to have one small dog on the property and the damage is consistent with having larger dogs on the property including damage to the wall, door and carpets and the clearing of dog feces from the

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yard. I do not believe that a significant amount of feces could be caused by other dogs visiting the yard. Therefore, I agree with the landlords claim for \$250.00 as the landlord admits that the carpet that was damaged by dog urine was old.

I also find that the tenants are responsible for the utility bills incurred during their tenancy. While the landlords agent may have assumed the bills would have been around \$150.00 based on previous usage he could not have determined how much usage the tenants would have used. It was the tenants responsibility to be prudent with their usage. However, I find that the landlord is not entitled to claim for the Hydro bill for April as the tenants had moved from the property by April 01, 2009. Therefore, I find the landlord is entitled to recover an amount of \$1726.01 for Hydro, \$164.61 for Star Choice and \$266.18 for Telus.

The tenancy agreement states that the tenants may purchase firewood from the landlord at a cost of \$100.00 per month and use as much as is necessary to heat the premises. The agreement does not state that the tenants must replace the firewood like for like or that they are to be charged per cord of firewood used. I find the landlord is entitled to receive a sum of \$400.00 for firewood for the four months the tenants resided at the property.

The tenancy agreement states that the landlord will give the tenants 30 days notice to end the tenancy. The landlord did give the tenants 60 days notice as the landlord was to resume occupancy of the property. However, this was an e-mail Notice and was not completed on the approved form. In light of this 60 day Notice and the fact that it was not on a approved form I find the tenants are entitled to receive the equivalent of one month rent in compensation pursuant to section 51 of the *Act*. Therefore, I find they do not owe rent to the landlord for the month of March, 2009.

I find as the landlord has been partially successful with his claim he is entitled to recover half the filing fee from the tenants. Pursuant to section 67 of the *Act* a Monetary Order has been issued for the following amount.



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Cost of sliding door repair	\$341.76
Chimney cleaning and other cleaning costs	\$85.00 \$150.00
Damage and cleaning due to pets	\$250.00
Outstanding utilities	\$2,156.80
Firewood usage	\$400.00
Filing fee 50% share	\$25.00
Total amount due to the landlord	<b>\$3,508.56</b>

## Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,508.56**. The order must be served on the respondent 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: September 10, 2009.

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Dispute Resolution Officer