



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Decision**

### **Dispute Codes:**

MND, MNR, MNSD, MNDC, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act, (the Act).

Despite being served by registered mail, the tenant did not appear.

### **Issues to be Decided**

The landlord was seeking to receive a monetary order for damage to the unit and for money owed or compensation for damage and loss under the Act for a total claim shown on the application of \$6,712.12.

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation for rental arrears
- Whether the landlord is entitled to monetary compensation damages or loss.

The burden of proof regarding the above is on the landlord/claimant.

### **Background and Evidence**

The tenancy began on February 1, 2009 and was a fixed term tenancy that was to expire February 1, 2010. The landlord testified that the tenant gave verbal notification on October 25, 2009 to vacate on November 1, 2009. The landlord testified that it wasn't clear when the tenant actually vacated because he had left many possessions in the unit. However the tenant had paid part of the \$2,000.00 rent for the month of

November 2009 in the amount of \$1,700.00 and was seen in the unit in mid-November when the landlord was showing the unit to a potential renter.

The landlord testified that efforts had commenced immediately to try to find a new tenant and continued for the next few months with an ongoing advertisement placed in a local website. The landlord submitted a copy of an advertisement dated October 25, 2009.

The landlord stated that near the end of December 2009, the tenant's possessions were moved out of the unit into the garage for secure storage as required under the Act and remained there until mid-February when the tenant finally came to remove some of the possessions. The landlord testified that a verbal agreement was made for storage costs of \$300.00 per month. At that time, certain items were taken away by the tenant and others were left on site in front of the garage. Evidently the tenant was supposed to return to retrieve some additional items, but this never transpired. The landlord eventually disposed of the remaining items and some were given away by the tenant.

The landlord testified that rental arrears were not satisfied, utilities were left outstanding and the unit was not cleaned by the tenant prior to vacating .

The Landlord was claiming \$300.00 rent still owed for October 2009 and \$300.00 rent owed for the month of November 2010 and \$315.12 water utility costs.

The landlord was also claiming the following damages:

- \$2,000.00 loss of rent for December 2009,
- \$2,000.00 loss of rent for January 2010, or storage costs of \$300.00
- \$2,000.00 loss of rent for February 2010 or storage costs of \$300.00
- \$300.00 storage costs for the month of March 2010
- \$300.00 cleaning costs
- \$189.00 for yard cleanup
- \$575.93 for yard work

- \$ 300.00 (\$648) for stove damage
- \$145.00 for Drywall damage
- Other expenditures including cost of advertising , replacement of broken toilet handle, replacement of missing shower head

The landlord testified that attempts were made to re-rent as soon as the tenant gave notice to vacate. The landlord submitted a copy of an on-line advertisement effective from October 25, 2009 until November 25, 2009. However, according to the landlord, efforts to re-rent were impeded by the state that the unit was left in, the fact that the tenant's possessions remained and the time of year. A new tenant was never found to move in before the expiry of the fixed term on February 1, 2010.

The landlord testified that no move-in condition inspection report was ever completed. However, the landlord stated that the unit was in good repair and clean when the tenant moved in and was left dirty and damaged when the tenant moved out. The landlord provided photos of the unit showing possessions left by the tenant. The landlord testified that near the end of December 2009, the items were moved from the unit into the garage.

The landlord testified that the tenant's possessions had to be stored for several months because the tenant did not attempt to make arrangements to retrieve them until February 2010 and this process was not fully completed by the tenant until March 2010, at which time some of the discarded items still remained. The landlord testified that an advertisement was placed in the newspaper on March 26, 2010 advising that the tenant's remaining belongings would be disposed of if left unclaimed. The landlord submitted a copy of the advertisement.

In regards to the utility costs being claimed, the landlord testified that the tenant left an unpaid water bill of \$315.12 that had accrued over several months. The landlord pointed out that the tenancy agreement, a copy of which was submitted into evidence,

clearly indicated that the tenant was responsible to pay for water and other utilities and the landlord feels that reimbursement should be ordered.

The landlord testified that the unit had to be cleaned because the tenant did not clean it up before leaving. The landlord referred to the photos showing the unit in an unkempt state and the invoice from the cleaner showing 12 hours of cleaning. The landlord was claiming \$300.00 cleaning costs.

The landlord stated that debris was left in the driveway which the landscapers hauled away at a cost of \$189 for yard cleanup. The landlord pointed out that the tenant was required to maintain the yard under the tenancy agreement and failed to do so. The landlord was therefore also claiming \$575.93 spent for yard work which included 16 hours at \$30.00 per hour for lawn mowing, weeding, hauling and disposing of garbage and green waste. Copies of the invoices were submitted into evidence.

The landlord testified that at some point during the tenancy the tenant a smooth-top range was damaged. The landlord supplied a photo of the damaged stove. The landlord stated that the tenant had agreed to replace the unit, but when this did not occur, the landlord found it necessary to put another used stove in the unit for the tenant's use. The landlord was claiming a pro-rated value of \$ 300.00 for the stove.

The landlord testified that \$145.00 was spent to repair drywall damage and supplied a copy of the receipt for payment and two photos; one of the wall with a small patch and another showing two nail or screw punctures that had been filled.

The total amount being claimed based on the testimony was \$8,725.05 including the claims for loss of rent for December, January and February. The amount of the claim was reduced to \$5,325.05, if only storage costs were allowed instead of loss of rent.

### **Analysis**

In regards to the rent \$300.00 rental arrears owed for October 2009 and \$300.00 owed for the month of November, I find that section 26 of the Act states that rent must be paid

when it is due under the tenancy agreement, whether or not the landlord complies with the Act or agreement. I find that the tenant did not pay the rent when it was due and the landlord is entitled to receive rental arrears of \$600.00 for October and November 2009.

In regards to the \$315.12 being claimed for water charges, I find that the water bills submitted into evidence from the municipality were addressed to the landlord. I find that while the tenancy agreement shows that utilities were not included in the rent, there was nothing specific in the agreement that set out details about the timing or method of payment of utilities to the landlord. However, section 46 of the Act states that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, then the landlord may treat utility charges as unpaid rent and may give a Ten-Day Notice. I find that the landlord did not present sufficient proof of a written demand for payment served on the tenant 30 days prior to considering the utility payment in arrears. I find I must dismiss the portion of the application relating to the \$315.12 utilities owed.

In regards to the other damages being claimed, section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and order payment in such circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

#### Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything reasonable to mitigate the damage or losses that were incurred.

In regards to the claim for loss of rent, I note that near the end of October, 2009, the tenant gave notice he was terminating the agreement prematurely and that he intended to vacate the unit. As the tenant paid rent for the month of November 2009, I find that this tenancy was terminated by the tenant effective November 30, 2009. Being that the unit was advertised for rent in October, I find that approximately one month before the tenancy ended, landlord was aware that it would be vacant..

I find that the tenant's action in ending the tenancy early was a violation of the fixed term tenancy agreement. I find that, despite efforts to mitigate by advertising the unit in the month of October 2009 until the end of November 2009, the landlord was not able to find a tenant for December and suffered a loss of rent in the amount of \$2,000.00.

However, based on the testimony, I find that the landlord was aware that the tenant was ending the tenancy at the end of November 2009 and delayed taking action to move the tenant's abandoned possessions from inside the unit to a storage area until close to the end of December 2009. I find that this likely affected the landlord's ability to find a new renter to take occupancy during December. In light of this, I find that the landlord has failed to adequately meet element 4 of the test for damages and must therefore share responsibility for the loss of rent for December 2009. I find that the landlord is entitled to

be compensated by the tenant in the amount of \$1,000.00 for loss of rent for December 2009.

In regards to loss of rent of \$2,000.00 for January, I find that the landlord has not sufficiently proven that element 4 of the test for damages was satisfied. The evidence submitted confirmed that the unit was undergoing significant renovations during January 2010 and I note that the cleaning and yard work had also not been commenced until sometime in January 2010. Given the above, I find that this portion of the landlord's application must be dismissed.

In regards to the \$2,000.00 loss of rent for February 2010, I find that this claim is not supported by the agreement because the fixed term tenancy agreement expired on February 1, 2010. Accordingly dismiss this portion of the landlord's application.

In regards to the claims for cleaning and damage, I find that the tenant's role in damages can best be established with a comparison of the condition before the tenancy began with the condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures.

Both section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections state that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Part 3 of the Residential Tenancy Regulation goes into significant detail about how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and Reports must be conducted. In this instance, the landlord admitted that neither a move-in condition inspection report nor move-out condition inspection report was completed. I find the failure to comply with sections 23 and 35 of the Act has impeded the landlord's ability to establish what damages were caused by the tenant and that they did not pre-exist.

However, regardless of the requirement for condition inspections, section 37 of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit

reasonably clean, and undamaged except for reasonable wear and tear. It is apparent that this tenant did not leave the unit reasonably clean and the landlord was forced to clean the unit and remove items for storage or disposal.

That being said, I note that the cleaner's invoice was dated January 15, 2010 and given that the unit was apparently undergoing renovations during January 2010, I find that a portion of the clean-up would have been required due to the renovation work. I find that the landlord should be compensated in the amount of \$100.00 for the removal of the tenant's possessions and debris from the unit and \$200.00 for yard and garbage haulage charges.

I find that while the landlord has shown that the drywall was damaged and that payment of \$145.00 was made to repair it, element 2 of the test for damages has not been satisfied to justify this claim because of insufficient proof that the damage was done by this tenant. Accordingly, this portion of the landlord's application must be dismissed.

That there was damage to the stove beyond wear and tear has also been proven through photographs. However, except for the landlord's testimony, there was no evidence of how or when this occurred nor what was agreed to by the parties at the time. Although the landlord testified that the tenant had damaged the stove sometime during the tenancy and had agreed to pay for it, no copies of any written communications between the parties on this subject were submitted into evidence. I find that the claim for \$300.00 costs for the stove replacement must be dismissed as the tenant's responsibility insufficiently proven by the landlord.

In regards to the landscaping costs, I accept that there was a term in the tenancy agreement requiring the tenant to maintain the yard including garden weeding, mowing the lawn, keeping walkways clear and raking debris. I note that the photographs verify that some portions of the yard had slightly overgrown grass and what appear to be dandelion plants were growing along the walkway. The landlord had submitted an invoice for \$575.93 from landscapers dated February 1, 2010. Being that the tenancy



ended in November 2009 during the winter, I find that a tenant would not normally be expected to keep the lawn mowed nor do the weeding at that time of year and that the landscaping work performed by the professionals exceeded basic maintenance for which the tenant would be responsible under the agreement. I also find that the landscaping was done two months after the tenancy was terminated. Given the above, I find that the landlord's claim for \$575.93 for landscaping must be dismissed.

In regards to the cost of storing the tenant's possessions, it is evident that some items were stored longer than others and a few of the items, such as the tent-trailer, took up a significant amount of space. However I do not find it reasonable that the tenant would be required to rent the entire garage for the storage. I find that the landlord should be compensated in the amount of \$200.00 for each month including December 2009, January 2010 and February 2010 for total storage costs of \$600.00.

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to monetary compensation of \$2,600.00 comprised of \$600.00 rental arrears for the months of October 2009 and November 2009, \$1,000.00 for loss of rent for December 2009, cleaning costs of \$100.00, garbage removal costs of \$200.00, storage costs of \$600.00 and \$100.00 for the cost of filing the application.

I order that the landlord retain the tenant's security deposit and interest of \$1,000.00 in partial satisfaction of the claim leaving a balance due of \$1,600.00.

### **Conclusion**

I hereby issue a monetary order for \$1,600.00 in favour of the landlord. This order must be served on the Respondent and may be filed in the Supreme Court, (Small Claims), and enforced as an order of that Court.

July 2010

Date of Decision

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Dispute Resolution Officer