



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes MND, MNR, MNSD, MNDC, FF

### Introduction

This matter dealt with an application by the landlord for a Monetary Order for unpaid rent, for damages to the rental unit, for loss or damage under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and to recover the filing fee for this proceeding. The landlord also applied to keep the tenants security deposit.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the tenants by registered mail on April 12, 2010. The tenants confirmed they 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

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the rental unit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security deposit?

### Background and Evidence

Both Parties agree that this tenancy started on May 01, 2008. This was a fixed term tenancy for two years and was due to expire on June 01, 2010. Rent for this unit was \$850.00 per month and was due on the first of each month. The tenants paid a security deposit of \$425.00 on March 21, 2008.

Residential Tenancy Branch  
Ministry of Housing and Social Development

The landlord testifies that the tenants gave him Notice to end the tenancy and moved out on March 29, 2010. The landlord stated that he told the tenants he would try to re-rent the unit so they would not have to incur any additional rent up to the end of their fixed term lease. The landlord states he advertised the unit and re-rented it for May 01, 2010. The landlord also testifies that the tenants did not pay rent for March, 2010. The landlord seeks the sum of unpaid rent of \$850.00 for March, 2010 and a loss of rental income for April, 2010 of \$850.00.

The tenants do not dispute that they owe rent for March, 2010 or dispute the landlords claim for a loss of rental income for April, 2010.

The landlord testifies that at the beginning of the tenancy the house had been newly renovated and was in a new condition. Because of this he did not do a move in condition inspection with the tenants and has provided letters from his realtor and two friends who saw the house after these renovations had taken place and before the tenants moved into the unit. These letters all state that the house was in a good, clean condition and had been newly renovated.

The landlord claims that at the end of the tenancy the tenants had caused damage to the property; there was a broken window, damaged door locks and the keys had not been returned, two toilets had to be replaced due to blockages; there was damage to a sink plug system; a water valve was leaking for the toilet and sink which caused damage to the downstairs ceiling; there were cracks in a ceiling and peeling paint on the ceilings; there was damage to walls from screws and nails and marks caused by the tenants young children; there was a strong odour in the house resulting in the landlord having to paint the house numerous times; The tenants had not cleaned the carpets which also had animal faeces on them, The walls had to be re-painted as the tenants had done some painting but used the wrong type of paint; the tenant caused damage to the stove door which resulted in the replacement of the stove; the shelves in the refrigerator had been damaged; there was damage to the kitchen cupboards; damaged screens on the bottom floor windows, the house had not been cleaned at the end of the tenancy; the tenants caused paint damage to the electrical outlets when they decorated; the tenants damaged the counter tops in the kitchen and had not removed child safety catches from the kitchen cabinets, by the stairs, bathroom and two bedroom doors.

Residential Tenancy Branch  
Ministry of Housing and Social Development

The landlord has provided receipts for work carried out and supplies purchased to rectify the damage he alleges was caused by the tenant's actions or neglect and states his labour costs are \$2,400.00.

The tenants state they take responsibility for the broken window and for the blockage of one of the toilets, they also claim the faucet in the kitchen was damaged but as it was used every day throughout their tenancy this was normal wear and tear. The tenants agree that they did not clean the carpets at the end of the tenancy and state that they put new carpets into the property at their own expense on the stairwell, landing and one bedroom and they put down the new linoleum the landlord purchased at no cost to the landlord. The tenants agree that some of the screen doors were damaged during their tenancy and they agree that they did paint over some of the electrical outlets. The tenants agree that the counter top was damaged when the female tenant placed a hot pan on it and the kitchen cupboard doors were damaged from the steam coming from the stove when she was cooking because the landlord had not fitted a stove fan.

The tenants also agree that they had to child proof the house; however they state the clips on the kitchen cupboards can be removed using hot water and state that if the landlord had fitted the door to the stairs as agreed they would not have had to place a stair gate in this area. The tenants agree that they did damage the fridge shelves during the tenancy and the stove door was damaged when the female tenant attempted to pull the door out to clean behind the stove. The tenants agree that they did hang pictures the walls and screw furniture into the walls to prevent it falling.

The tenants dispute the remainder of the landlords' claims. The tenants state the second toilet the landlord claims was blocked was old and made from different toilet parts they do not know how it was damaged. The tenant's dispute that they caused damage to the ceilings and this would be the landlords' responsibility if he found a leaking valve which caused water to leak onto the ceilings. The tenant's state they did clean the house at the end of the tenancy and the landlords cleaner did not come in to clean until after the landlord had carried out some repair and decorating work which would create more mess then was left at the end of their tenancy.

Residential Tenancy Branch  
Ministry of Housing and Social Development

The tenants also state that they repainted some of the rooms with the exception of two bedrooms with paint left in the house from previous decorating work.

The tenants claim the landlord conducted a move out condition inspection with them at the end of the tenancy but also forced them to sign the move in section of the report.

The landlord testifies that he did not force the tenants to sign this report he claims he asked them to sign to state they agreed that the appliances were new at the start of the tenancy.

The tenants do not dispute the landlords' application to keep their security deposit in partial payment towards unpaid rent.

The tenants and landlord presented other evidence that was not pertinent to my decision as there was no evidence of an agreement in place concerning a rent reduction at the start of the tenancy for work carried out by the tenants. I looked at the evidence that was pertinent and based my decision on this.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties there is no dispute that the tenants did not pay rent for March, 2010 and the landlord mitigated his losses by advertising the property for rent for April and managed to re-rent it again for May 01, 2010. Therefore, I find this section of the landlords claim for unpaid rent for March, 2010 and a loss of rental income for April, 2010 is upheld and the landlord is entitled to a monetary award to the sum of **\$1,700.00** pursuant to section 67 of the Act.

With regards to the landlords claim for damages and cleaning to the property, I have applied a test used for damage or loss claims to determine if the claimant has meet the burden of proof in this matter:

- Proof that the damage or loss exists

Residential Tenancy Branch  
Ministry of Housing and Social Development

- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 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 to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. 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 possible to address the situation and to mitigate the damage or losses that were incurred.

The tenants have agreed that they did cause some of the damage to the rental unit during their tenancy; consequently, I find the landlord is entitled to recover the sum of **\$123.20** for the cost of replacing the broken window and door locks; the sum of **\$91.02** for plumbing supplies and replacement toilet; the sum of **\$110.12** for carpet cleaning; **\$63.00** for the cost of the attempted repair of the stove and **\$726.88** for the replacement stove when it could not be repaired; **\$72.80** for the replacement refrigerator shelves; **\$120.00** for the reduced cost of the screens; **\$100.00** for the replacement sockets due to paint.

It is also my decision that the tenants are not responsible for all the costs associated with the ceiling and wall repairs. The landlord has provided no evidence that the tenants were negligent in causing damage to the ceilings and therefore the landlord must bear this cost himself. I do find however that the tenants state they did put hooks, screws and nails in the walls to hang pictures and ensure safe placement of their furniture and did not repair these holes at the end of their tenancy; consequently, I have reduced this section of the landlords claim by 50% to a sum of **\$152.54**.

Residential Tenancy Branch  
Ministry of Housing and Social Development

I find as the walls required repair that the tenants must also share the costs incurred for painting and I have reduced the landlords claim for paint supplies by 20% to a sum of **\$369.28**. I have considered both arguments with regard to the house cleaning and find from both Parties evidence and verbal testimony that the tenants did carry out some cleaning to the house at the end of the tenancy and the landlords evidence does show that the cleaner did not carry out their work until some weeks after the tenants vacated and after contractors or the landlord had been in and out of the house. I also find the landlords' photographic evidence supports, in part, the landlords' claim that the tenants did not carry out a thorough clean of the unit. Consequently, I find both Parties must share the cleaning costs of \$392.50 and the tenant's share of this will be **\$196.25**.

With regard to the landlords claim for the replacement of the second toilet due to the same type of blockage as found in the first toilet; it is my decision that it is likely that this toilet was also blocked during the tenancy and therefore would be the responsibility of the tenants. However, as the toilet was old the landlord has agreed to reduce this liability to 50% and I find therefore that the tenants must bear the cost of **\$56.15**.

With regards to the landlords labour costs of \$2,400.00 I find the landlord would be expected to carry out some work in the property to bring it back up to a high standard he requires to rent the property again and as the landlord has not proven all aspects of his claim it is therefore my decision to reduce his costs for labour by 25% and find the tenants must pay the reduced amount of **\$1,800.00**.

I further find the landlord incurred costs in advertising the unit for rent and find the landlord is entitled to recover this cost of **\$10.50** from the tenants as they ended their tenancy before the end of the fixed term. It is my decision that the landlord has met the burden of proof in some aspects of his claim as detailed above. The total amount of monetary liability is as follows:

Unpaid rent for March and loss of income for April, 2010	\$1,700.00
--	------------

Agreed damages	\$1,407.02
Additional damages and labour costs	\$2,574.22
Filing fee	\$50.00
Total	\$5,741.74

However, the monetary amount exceeds the amount the landlord has claimed on his application; consequently I find the landlord is entitled to a monetary award for the amount claimed of **\$4,999.00** only pursuant to section 67 of the *Act*.

As the landlord has been largely successful with his claim I find he is entitled to recover the filing fee of **\$50.00** from the tenants pursuant to section 72(1) of the *Act*

The tenants have agreed that the landlord may offset their security deposit and accrued interest against the outstanding rent. Therefore, I Order the landlord pursuant to section 38(4)(B) of the *Act* to keep the security deposit (\$425.00) and accrued interest (\$4.98). The sum of **\$429.98** will be offset against the outstanding rent.

## Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,619.02**. The order must be served on the respondents 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: August 11, 2010.

---

Dispute Resolution Officer