



# Dispute Resolution Services

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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 money owed or compensation 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 security deposit.

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 April 20, 2010. The tenant confirmed she had received them.

Both parties and a witness for the tenant appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party and witness. 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 unit, site or property?
- 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 and pet damage deposits?

## Background and Evidence

Both parties agree that this tenancy started on October 01, 2009 when a new tenancy agreement came into force. This was a fixed term tenancy which was due to expire on September 30, 2010. Rent for this unit was \$900.00 per month and was due on the first of each month. The tenant paid a security deposit of \$450.00 and a pet damage deposit of \$450.00 on September 14, 2008. A move in and a move out condition inspection was carried out and the tenant gave the landlord her forwarding address in writing on April 01, 2010.

The landlord testifies that the tenant failed to pay her rent in January, 2009. The tenant gave the landlord two cheques for this period one of which was returned as there were insufficient funds (NSF) and the other the landlord states was misplaced and was not presented to the bank until December, 2009. The landlord testifies that when she found this cheque for \$400.00 and realized it was late being cashed she asked the tenant to replace it. She claims the tenant refused and said she had paid her rent. The landlord asked for proof of this either with bank statements or cash withdrawal evidence neither of which the tenant produced. The landlord states the cheque was presented at her bank and was returned NSF. The landlord also testifies that the tenant had agreed to move from the rental unit on March 31, 2010 but did not finish removing her belongings until April 01, 2010. The landlord states the tenant agreed to pay a pro-rated rent of \$30.00 for this day. The landlord seeks to recover the sum of \$430.00 in unpaid rent.

The landlord states the tenant gave her notice to end the tenancy on March 10, 2010 to end tenancy on April 15, 2010. The landlord states she told the tenant she had to give her one full months notice and she could not legally end the tenancy until April 30, 2010. The landlord states they reached an agreement that if the landlord could find a new tenant for April 01, 2010 the tenant would not have to pay rent for April. The landlord states she did find a new tenant and informed the tenant on March 13, 2010 that the new tenant would move in on April 01, 2010 and the tenant told her that she would vacate the rental unit on March 31, 2010.

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The landlord testifies that at the end of the tenancy it was noted on the move out condition inspection report that the blinds were broken and had not been cleaned. The landlord incurred costs of \$155.49 to repair the blinds and \$40.00 having them cleaned.

The landlord testifies that the tenant told her she had had the carpets cleaned on March 31, 2010 and produced a receipt for this work. However the landlord states she found the carpets could not have been cleaned at that time as the receipt shows they were cleaned at 10.00 a.m. and at that time the tenants' furniture and boxes of belongs were still on the carpet. The landlord states that even if they had been cleaned they remained dirty and she had to have them cleaned at a cost of \$83.99.

The landlord testifies that the tenant had not cleaned the rental unit to a reasonable standard and did not return it in the same condition as when she rented it. The floors, fixtures, ceiling fan and windows had to be cleaned. The walls had to be washed down with a TCP mixture prior to them being painted due to the effects of someone smoking in the rental unit. The incoming tenant complained of cigarette smoke stench in the carpet, walls, blinds and ceiling. This cleaning work was carried out at a cost of \$100.00.

The landlords seeks to recover the sum of \$99.17 for some repairs required at the end of the tenancy; a clamp was missing from the dryer, there were broken parts on the stove, a screw was missing from the towel rack, screen door roller was repaired, kitchen door was cracked, curtain rod holder had to be reinstalled, valance replaced in the main bedroom, closet doors required re-hanging, living blind track repair and kitchen blind tilt rod repair. The landlord testifies she also had to purchase some strong garbage bags to put garbage left behind by the tenant as when she removed one of the bags it split open.

The landlord testifies that the unit had been freshly painted when the tenant first moved in September, 2008. Due to the cigarette smell and gouges in the wall it had to be repainted at a cost of \$150.00. The landlord also seeks to recover \$35.00 for paint the tenant used of hers when she painted the living room wall without the landlords consent. The landlord states the

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tenant did not paint right through to the dining room but just painted one living room wall and there was a noticeable paint line on the wall.

The tenant disputes the landlords' claims. The tenant states that she does not owe rent for January, 2009. The tenant states she paid the landlord \$400.00 in cash and as the landlord was busy with a patient in her clinic she did not give the tenant a receipt. The tenant states the cheque was returned NSF in December, 2009 as the landlord waited for so long to cash it.

The tenant testifies that she did clean the rental unit. The tenant states the landlord did not give her sufficient time to clean the unit as she wanted her out on that day. The tenant states that when she gave notice to the landlord to end the tenancy she stated that she would move out on April 15, 2010 not March 31, 2010. The tenant states that she did move out on April 01, 2010 but thought she would have time to go back to clean and make good any repairs. The tenant states she told the landlord she could use her pet damage deposit to cover rent from April 01 to April 15, 2010. The tenant also testifies that she was going to try to move out on March 31, 2010 but had an arm injury so wanted to have until April 15, 2010.

The tenant called her witness. This witness testifies that he helped the tenant to move out and he removed all the garbage from the rental unit so how can the landlord state she had to move the garbage and buy bags to put it in. He claims the photographs the landlord has provided showing the garbage bags are not factual as they were removed. The witness also claims the tenant was cleaning the unit on moving day but the landlord kept telephoning her.

The landlord responds to the tenants witness and states she did have to remove the garbage and her new tenant has also stated that there was garbage left at the rental unit in a letter produced in evidence.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness; With regard to the landlords claim for unpaid rent, I find the tenant has

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presented no evidence to show that she did pay the balance of rent due in January, 2009 in cash. While I accept that some of the blame lies with the landlord in misplacing the cheque for this rent payment I find as the other cheque that was presented was also returned NSF that it would be likely that if the landlord had presented this cheque for \$400.00 on time then it would have been returned also. Payment of rent is the tenants' responsibility and if she is unable to provide any evidence such as a receipt or a bank statement showing a withdrawal of cash than I am inclined to accept the landlords' testimony that rent to the sum of \$400.00 was not paid. With regard to rent for April 01, 2010 of \$30.00; I find the landlord did inform the tenant she had found a new tenant to move into the rental unit on April 01, 2010 and the tenant agreed to move out on March 31, 2010. Therefore, I find as the tenant overheld at the rental unit and did not vacate on the agreed day of March 31, 2010 that the landlord is entitled to recover rent for this day in April, 2010 from the tenant. The landlord is therefore entitled to recover the sum of **\$430.00** pursuant to section 67 of the *Act*

With regards to the landlords claim for cleaning, painting and damages to the rental unit; When a tenant and landlord have reached an agreement for the date a tenant will vacate the rental unit the tenant must clean and make good any repairs by this date. I do not accept the tenants' testimony that she wanted to keep the tenancy until April 15, 2010 as the landlord had already found a new tenant by this time and the tenant was aware that this new tenant would be moving into the rental unit on April 01, 2010. Consequently, the tenant should have cleaned and repaired any damages before she vacated the rental unit. As the move in and move out condition inspection reports indicate, there was some damage and cleaning required in the rental unit. Consequently, I find the landlord has established her claim to recover the sum of **\$544.66** pursuant to section 67 of the *Act*.

With regard to the carpet cleaning; I find the tenant has provided evidence to show that the carpets were cleaned at the end of the tenancy, However, I accept the landlords testimony that this cleaning was carried out while the tenants furniture and boxes remained on the carpets as the time shown on the receipt shows the carpets were cleaned at 10.00 a.m. The landlord also states that the tenant had people walking on the carpets moving her belongings out of the unit after they were cleaned. Therefore, I question the extent of the cleaning and the condition of the

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carpets at the end of the move out. Consequently, I find the landlord has established her claim for carpet cleaning to the sum of **\$83.99** pursuant to section 67 of the *Act*.

With regards to the landlords claim for \$35.00 for paint used by the tenant without the landlords consent; in this matter I find that the tenant did apply this paint to the walls of the rental unit and the landlord states that this wall did not require re-painting by her painter. Therefore, I find this section of the landlords claim is dismissed.

With regard to the landlords claim for costs incurred in preparing evidence for her application; she seeks to recover \$53.84 for registered mail costs, printing costs, and photocopying costs. It is my decision that these are the costs of doing business as a landlord and therefore this section of the landlords claim for money owed or compensation is dismissed.

The landlord has applied to keep the tenants security deposit and pet damage deposit. As I have found largely in favor of the landlords claim, I Order the landlord to keep the security and pet damage deposits and accrued interest of **\$904.02** to offset against the outstanding rent and damages to the rental unit pursuant to section 38(4)(b) of the *Act*.

As the landlord has been largely successful with her claim I find she is entitled to recover the **\$50.00** filing fee paid for this proceeding pursuant to section 72(1) of the *Act*

A Monetary Order has been issued for the following amount:

Unpaid rent	\$430.00
Carpet cleaning	\$83.99
Filing fee	\$50.00
Subtotal	\$1,108.65
Less security and pet damage deposits plus accrued interest	(-\$904.02)
<b>Total amount due to the landlord</b>	<b>\$204.63</b>

Conclusion



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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 **\$204.63**. 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: August 31, 2010.

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Dispute Resolution Officer