



# Dispute Resolution Services

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Residential Tenancy Branch  
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 rental unit; damage or loss under the Act, regulations or tenancy agreement; retention of the security deposit; and, recovery of the filing fee. One tenant appeared at the hearing and confirmed she was representing both tenants. Both parties were provided the opportunity to be heard and to respond to the submissions of the other party.

### Issues(s) to be Decided

1. Has the landlord established that the tenants damaged the rental unit and if so the amount of damage?
2. Has the landlord established an entitlement to recover loss of rent from the tenants?
3. Return or retention of the security deposit.

### Background and Evidence

I heard undisputed testimony from the parties as follows. The month-to-month tenancy commenced August 1, 2009 and ended at the end of March 2010. The tenants were required to pay rent of \$1,100.00 on the 1<sup>st</sup> day of every month. The tenants had paid a \$550.00 security deposit. No move-in or move-out inspection report was prepared by the landlord. The tenants personally served the landlord with a notice to end tenancy on March 1, 2010 to be effective at the end of March 2010.

The landlord testified that the rental unit was not re-rented until June 1, 2010 despite advertising the unit on Craigslist. The landlord testified that the tenants damaged the walls, requiring the landlord to repaint the unit, and ripped out baseboards. In addition the stove was unclean. I noted that the landlord had not provided receipts for the repairs to which the landlord responded that he did most of the work himself and could provide receipts for paint and baseboard if required.

The tenant responded to the landlords submissions as follows. The tenant gave notice one day late but could not fathom how this made a difference since there was only one showing of the unit to a prospective tenant during the month of March 2010. The tenant acknowledged that there were scuffs to the walls but characterized the scuffs as normal wear and tear that could be remedied by some drywall mud and paint touch ups. The tenant had no knowledge of damaged baseboards. The tenant acknowledged that she had not completely cleaned the stove.

The tenant also testified that before this matter went to a hearing the landlord was seeking \$300.00 for repainting and the tenants offered \$150.00 in an effort to resolve the dispute. The tenant pointed to the Application for Dispute Resolution where the landlord changed the amount of damage from \$300.00 to \$550.00. The tenant submitted that the actual damages amount to approximately \$50.00.

As evidence for the hearing the landlord provided a copy of the notice to end tenancy given by the tenants.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 45 of the Act provides that a tenant may end a month to month tenancy by giving the landlord one full month of written notice. In this case, the tenants gave less one full month of notice since notice was given the same month the tenancy ended. Therefore, the tenants did violate the requirements of the Act with respect to giving notice to end the tenancy.

While the landlord established the tenants violated section 45 of the Act, the landlord has the burden to prove the landlord did whatever was reasonable to minimize the loss of rent. In this case, the landlord advertised by way of one website only and I was not provided a copy of the advertisement. Therefore, I am unable to conclude the landlord took every reasonable step to minimize the loss of rent and I dismiss the landlord's claim for loss of rent without leave to reapply.

With respect to damages to the rental unit, I find the landlord did not provide sufficient evidence to substantiate he incurred a loss of \$550.00 as claimed. Further, without evidence of the damage to the walls and baseboard I am unable to conclude the tenants did damage these items beyond the amount acknowledged by the tenant. As information for the landlord, evidence of damage may be established by condition

inspection reports prepared in accordance with the Residential Tenancy Regulations, photographs, receipts, witness statements, among other ways.

As the tenant acknowledged the value of cleaning and damages of approximately \$50.00 I award this amount to the landlord. The remainder of the landlord's claims for damages are dismissed without leave to reapply.

I do not award the filing fee to the landlord as I find the tenants did make an effort to resolve this dispute for a fair amount.

In light of the above, the landlord is authorized to deduct \$50.00 from the tenants' security deposit and is ORDERED to return the balance of \$500.00 to the tenants forthwith. Enclosed with this decision for the tenants is a Monetary Order to serve upon the landlord. The Monetary Order may be filed in Provincial Court to enforce as an Order of that court.

### Conclusion

The landlord is authorized to retain \$50.00 of the security deposit and must pay the tenants the remaining balance of the security deposit of \$500.00 forthwith. The tenants have been provided a Monetary Order in the amount of \$500.00 to serve upon the landlord.

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