



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with an application by the Landlord for an order for monetary damages for alleged damages to the rental unit, for unpaid rent arising from the Tenants breaking a fixed term lease early, to keep all or part of the security deposit, for money owed under the Act or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issues(s) to be Decided

Did the Tenants breach the term lease, or fail to repair and clean the rental unit, entitling the Landlord to monetary compensation?

### Background and Evidence

On July 17, 2009, the parties signed a fixed term tenancy agreement, which was to run from August 1, 2009, until July 31, 2010 (the "Tenancy Agreement"). The monthly rent was set at \$1,190.00, and the Tenants paid a security deposit of \$595.00 on July 17, 2009.

On or about March 1, 2010, the Tenants gave the Landlord a written notice they were vacating the rental unit on April 1, 2010. The Tenants explain in their letter that they realize this is earlier than the Tenancy Agreement allows, however, the Tenants say they are leaving due to, "... multiple leaks in the apartment and due to our health concerns regarding living in an environment with possible mold spores in the walls, we anticipate this will not be an issue."

According to the Landlord, the Tenants left the rental unit on March 31, 2010. The Agent for the Landlord testified the rental unit had new renters move in on June 1, 2010.

The Landlord is claiming for \$1,190.00 for one month of lost rent and the liquidated damages of \$300.00 set out in the Tenancy Agreement. The Landlord is also claiming \$73.50 for carpet cleaning, \$63.00 for general suite cleaning, \$52.50 for drape cleaning, and \$150.00 for wall repair, wall painting and cabinet painting.

The Landlord is claiming that the Tenants painted the walls and kitchen cabinets different colours and did not return them to the original colours at the end of the tenancy.

As well, the Landlord is claiming the Tenants did not have the carpets cleaned at the end of the tenancy, that portions of the unit were not cleaned to a reasonable standard, and that the drapes had to be cleaned.

The Tenants submit that the reason they left the rental unit is that there had been water leaking into the rental unit. The appearing Tenant testified that there had been a flood into the rental unit in January of 2010, down through the light in the kitchen. The Tenant testified that there was significant water damage and that the Landlord had installed fans to dry out the unit. The Tenant testified that an Agent for the Landlord told her the Landlord would clean the carpet following the clean up of the flood.

The Tenant testified there were black mold spores that developed in the rental unit. The Tenant felt the Landlord had breached the portion of the Tenancy Agreement and Act that required the Landlord to maintain the rental unit in a standard that complied with health, safety and housing standards required by law. She felt she had complied with the emergency repairs provisions of the Act. She felt they had given the Landlord a reasonable amount of time to complete the repairs, but there were still mold spores in the rental unit.

The Tenant also testified that they did not paint the walls or cabinets in a different colour. She testified that they left the walls the same colour they were when they moved in.

The Tenant also testified that the curtains were stained and old at the outset of the tenancy.

The Witness for the Tenant testified that she helped the Tenants vacate the rental unit and the rental unit was in very poor shape due to the flood. She testified that there were mushrooms growing out of the rug in a closet in the rental unit.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenants breached the Act and Tenancy Agreement by ending the tenancy contrary to the Act and the Tenancy Agreement.

Under section 45 of the Act, the Tenants could not end the fixed term Tenancy Agreement, unless it was ended in accordance with the Act.

The Tenants should have followed section 45(3) of the Act and notified the Landlord in writing that the Landlord had breached a material term of the contract (that is to keep it in repair, etc.), that the Tenants would give the Landlord a reasonable amount of time to correct the breach, and if nothing was done they would then end the tenancy. The Tenants did not do this.

The Landlord mitigated the loss, as required by the Act, and had new tenants move into the rental unit on June 1, 2010.

Therefore, I find the Landlord is entitled to one month of lost rent due to the Tenants' breach. Furthermore, I find that the Tenants shall pay the liquidated damages of \$300.00 as set out in the Tenancy Agreement for the cost of re-renting.

As to the claim for cleaning the carpet, I dismiss this portion as I find that the Landlord should have had the carpets cleaned after the flood in the unit. Likewise, I find it more likely that the Landlord would have had to repair and repaint the walls, and clean the drapes, following a flood. I also find there is insufficient evidence that the Tenants painted the unit a different colour and dismiss this portion of the claim.

I do accept the evidence of the Landlord that the Tenants failed to clean the rental unit as required, in particular the stove, fridge, and washroom, and I allow the Landlord \$63.00 for this claim.

I find that the Landlord has established a total monetary claim of **\$1,603.00** comprised of the above described amounts and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of **\$595.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,008.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced 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 24, 2010.

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Dispute Resolution Officer