



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes

For the landlord – OPB, MNR, MNDC, MND, FF

For the tenants – MNDC, MNSD, OLC, FF

### Introduction

This decision deals with two applications for dispute resolution, one brought by the landlord and one brought by the tenants. Both files were heard together. The landlord seeks a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and for damage to the rental unit. The landlord also seeks to recover the filing fee. At the outset of the hearing the landlord stated that the tenants have moved out and he withdraws his application for an Order of Possession. The tenants seek a Monetary Order for money owed or compensation for damage or loss under the *Act*, they seek to recover their security deposit and filing fee. The tenants withdrew their application for an Order for the landlord to comply with the *Act*.

I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing. The tenants and the agent for the landlord appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. 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 Money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order for damage to the rental unit?

Residential Tenancy Branch  
Ministry of Housing and Social Development

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to recover their security deposit?

## Background and Evidence

This Tenancy started on December 30, 2009. This was a fixed term tenancy for 13 months and was due to expire on January 31, 2011. The tenants paid a monthly rent of \$1,500.00 on the first of each month. The tenants paid a security deposit of \$750.00 on January 01, 2010. The tenants gave the landlord their forwarding address in writing on May 10, 2010.

## The landlords' application

The landlord's agent testifies that the tenants first moved into the unit on a temporary tenancy for two months. The landlord and tenant entered into a new fixed term tenancy agreement starting on December 30, 2009 for 13 months. The new tenancy agreement stated that the rent for this unit was \$1,750.00 per month but as the tenants had agreed to stay for 13 months their rent would be reduced to \$1,500.00. Should the tenants fail to honour this lease agreement they must pay back the reduced amount of rent for the period of the tenancy until such a time as the unit is re-rented.

The landlords' agent testifies that the tenants gave a commitment to rent the unit for 13 months by signing this lease agreement and they broke the lease on April 30, 2010. The landlords' agent states the unit was re-rented for May 01, 2010 at a reduced rent of \$1,400.00. The landlords' agent testifies that the landlord seeks to recover the rent rebate for February, March and April, 2010 of \$750.00. The landlords' agent states they will not pursue the remainder of the rent from the tenants.

The tenants' dispute that they owe rent to the landlord. They testify that they ended the tenancy early as the landlord entered their unit illegally without proper notice when they were having a party. They also claim the landlord did not complete repairs to the rental unit as agreed in their

Residential Tenancy Branch  
Ministry of Housing and Social Development

temporary lease and did not maintain the rental unit in accordance with the *Act*. The tenants agree that they did not inform the landlord in writing of the required repairs but state they told him verbally many times. The tenants also agree they did not write to the landlord documenting why they were ending the tenancy early.

The landlord disputes the tenants' testimony that he entered their unit without proper notice. He claims the tenants were having a loud party and he could hear his 16 year old daughter at the party screaming. He went in through the open door to get his daughter who was very drunk. The landlord claims as this was his daughter he deemed this to be an emergency situation.

The tenants dispute the landlords' agent testimony and state they did not party with 16 year old girls.

The landlords' agent testifies that the tenants did not pay the last months utilities. The tenants do not dispute this and agree they owe the sum of \$135.00.

The landlords' agent testifies that the tenant gave him a cheque for \$67.20 for the tenant's internet fees from March to July, 2010. The landlords' agent claims this cheque was returned as there were insufficient funds available. The landlord seeks to recover this amount plus a charge of \$100.00 for bank charges.

The tenants claim as they moved out on April 30, 2010 they should not have to pay internet charges for the period May to July, 2010. However they agree that they owe the landlord \$22.40 for the period they did live in the unit.

The landlords' agent testifies that the tenants caused a great deal of staining to the carpet during their tenancy and did not clean the carpet when they vacated the unit. The landlords' agent states the living room and hallway carpet were replaced with laminate flooring but he seeks to recover the cost of cleaning the two bedrooms at a sum of \$79.00.

Residential Tenancy Branch  
Ministry of Housing and Social Development

The landlords' agent claims the tenants did not clean the unit at the end of the tenancy. It was left in a dirty condition and he had spent two hours having it cleaned at \$25.00 per hour to a sum of \$50.00.

The landlords' agent states the tenant left some furniture behind at the end of the tenancy they left an old couch, chair and television which he had given them during their tenancy. These were removed at a cost of \$150.00.

The tenants dispute the landlords' agents' claims. They state the carpets were ripped and heavily stained at the start of the tenancy and as the move in report shows they were cleaned by the landlord before the move in condition inspection was completed and this inspection shows that they were still heavily stained at that time.

The tenants' testify that they cleaned the entire house before they moved out including mopping and scrubbing the bathroom.

The tenants claim the couch, chair and television were left at the unit as they belonged to the landlord. They claim the couch was never brought into the house but remained in the carport. The tenants claim there was never an agreement that they owned these items.

## The tenant's application

The tenants seek compensation of \$750.00 from the landlord as he failed to do the repairs to the rental unit as agreed in their previous temporary tenancy agreement. The tenants claim the landlord did not repair light fixtures or a light switch, he did not make good the damage caused by a roof leak, or repair a cracked window. The tenants agree that landlord's agent did replace the fridge and stove.

The landlord disputes the tenants claims he states the roof was repaired after it was found to leak, the light fixtures and switch were also fixed and the only item that was not repaired during

Residential Tenancy Branch  
Ministry of Housing and Social Development

the tenancy was the cracked window. The landlords' agent claims the window was tapped and secure.

The tenant's claim they seek to recover their security deposit of \$750.00 as the landlord did not give them two opportunities to attend the move out condition inspection and the landlords' agent completed this in their absence.

The landlords' agent disputes the tenant's claims. He states when the tenants came to ask for another day to move he asked them to meet him for an inspection before they moved out. The landlords' agent then sent an e-mail to the tenants asking them to meet him for the inspection that evening and he claims to have also printed this e-mail out and put it in their mail box. The landlords' agent states he also telephoned the tenants about attending the move out condition inspection. He claims the tenant had four opportunities to meet with him to attend the move out inspection.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. The landlord argues that the tenants broke the lease agreement to rent the unit for 13 months at a reduced rent. He argues that as the tenants broke the lease they must pay back the rent reduction they were given of \$250.00 for three months. The tenants argue that they broke the lease because the landlord did not make the agreed upon repairs to the rental unit and he entered their unit without proper notice, therefore the landlord breached the tenancy agreement and they are entitled to end the lease.

In this instance I find the tenants did not notify the landlord in writing of the repairs and give him a reasonable time to complete the repairs. The tenants did not put their grievance to the landlord in writing concerning the landlord entering their unit without proper notice or provided the landlord with a letter outlining the alleged breaches so he could have taken action to remedy this. I also find that one incidence of entering a rental unit would not constitute a breach of the

Residential Tenancy Branch  
Ministry of Housing and Social Development

tenancy agreement particularly if the landlords' agents' daughter was in the unit and he believed she was in any danger.

Consequently, it is my decision that the tenants ended the tenancy without cause and were in breach of the tenancy agreement. Therefore, I find in favor of the landlords claim to recover the sum of **\$750.00** from the tenants for the rent reduction for February, March and April, 2010 pursuant to section 67 of the *Act*.

There is no dispute about the unpaid utilities and therefore the landlord is entitled to recover the sum of **\$135.00** from the tenants.

With regard to the landlords claim for \$100.00 for the bounced cheque; the regulations state that the most a landlord may charge a tenant for uncleared cheques is \$25.00. Therefore, I have reduced the landlords claim to **\$25.00** and he is entitled to a monetary award for this amount pursuant to section 67 of the *Act*.

With regard to the landlords claim for six months payment for the internet; I find as the tenants did not use this service for the full six months the landlord is only entitled to recover the sum of **\$22.40** from the tenants for the two months they used the internet pursuant to section 67 of the *Act*.

With regard to the landlords claim for carpet cleaning; the landlord has not submitted sufficient evidence to support his claim that the tenants caused staining to the carpet during their tenancy and a tenant is only required to clean a carpet after a tenancy of one year unless they have caused staining to the carpet. The move in condition inspection shows that stains were visible on the carpets at the start of the tenancy.

The landlord has provided insufficient evidence to show that the tenants left the rental unit unclean at the end of the tenancy. Under the *Residential Tenancy Act* s.32 a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to

Residential Tenancy Branch  
Ministry of Housing and Social Development

the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required. Consequently this section of the landlords claim for carpet cleaning and cleaning the unit is dismissed.

With regard to the landlords claim for removal of the furniture; I find there is no evidence to support the landlords claim that he gave this furniture to the tenants. No written agreement has been provided in evidence and when one Party contradicts the evidence of the other Party the burden of proof falls on the claimant. Consequently I find the landlord has provided no corroborating evidence to show he gave this furniture to the tenants and this section of his claim is also dismissed.

With regards to the tenants claim for \$750.00 in compensation for the landlords failure to make the repairs; As previously mentioned a tenant must request the landlord make the repairs in writing and give the landlord a reasonable time frame in which to make the repairs. If the landlord fails to make the repairs the tenants are entitled to apply for Dispute Resolution seeking an Order for the landlord to repair the unit. In this case I find the tenants did not follow these steps and as such have not shown how they have mitigated their loss in this matter. Consequently, this section of their claim is dismissed.

With regard to the tenants claim for the return of their security deposit; I find it is likely the landlord did give the tenants opportunity to attend the move out condition inspection however he failed to give them an exact date and time when they should attend. The tenants would normally therefore be entitled to recover their security deposit however I find that sections 38, 67 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security and pet damage deposit where it is necessary to give effect to the rights and obligations of the parties. As I have found in favour of part of the landlords monetary claim I find he is therefore entitled to keep the tenant's security deposit to offset against the unpaid rent.



# Dispute Resolution Services

Page: 8

Residential Tenancy Branch  
Ministry of Housing and Social Development

As the landlord has been partially successful with his claim I find he is entitled to recover the \$50.00 filing fee from the tenants pursuant to section 72(1) of the Act. As the tenants have been unsuccessful with their claim I find they must bear the cost of their own filing fee.

The landlord is entitled to a Monetary Order for the following amount:

Recover the rent reduction for February, March and April, 2010	\$750.00
Bank charges	\$25.00
Internet service	\$22.40
Subtotal	\$932.40
Filing fee	\$50.00
Less Security deposit	(-\$750.00)
<b>Total amount due to the landlord</b>	<b>\$232.40</b>

## Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$232.40**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The tenant's application is dismissed without leave to reapply.

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: September 03, 2010.

---

Dispute Resolution Officer