



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking to obtain a monetary order.

The hearing was conducted via teleconference and was attended by the landlord only. The tenants did not attend.

The landlord provided documentary evidence that notice of hearing documents were sent to the tenants at the forwarding address they provided via registered mail from Mexico. I accept the tenants have been served with notice of this hearing.

While the applicant landlord had not applied on their online Application for Dispute Resolution either for a monetary order for unpaid rent or for compensation for any losses under the tenancy agreement, I find the total value of the claim and the documentary evidence submitted provide sufficient notification to the tenants that the landlord is seeking compensation for rent expected but unpaid for May and June 2010.

I therefore accept the landlord's amendment to include their claim for losses resulting from the tenant's failure to comply with the terms of the tenancy agreement and pay rent to the end of the fixed term.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties for a tenancy that began on July 1, 2009 as 1 year fixed term tenancy for the monthly rent of \$1,200.00 due on the 1<sup>st</sup> of the month with a security deposit of \$600.00 paid.

The landlord has also submitted substantial email correspondence between the parties related to the scheduling of a move out inspection. The parties ultimately agreed on completing the move out inspection on April 27, 2010 at 3:30 p.m. The landlord's agent sent an email to the landlord on April 27, 2010 at 6:57 p.m. confirming the tenants did not attend and that the house was empty.

The landlord has submitted a copy of a move in Condition Inspection Report showing that all items are in good or fair condition with some minor notations indicating a problem with a shelf in the fridge; crack in a ceiling beam; scratches throughout the livingroom floor and that the front door was scratched. The report was signed by the tenants agreeing that it represents the condition of the rental unit at the start of the tenancy.

The landlord has submitted photographs of damage to woodwork surrounding the fireplace, stairs and moulding, an interior door, damage to a cupboard, front door handle towel rack and floor. The landlord testified the damage was caused by a dog, contrary to what was allowed in the tenancy agreement. The landlord testified that the repair work on all the damage was completed on September 9, 2010 and cost \$5,500.00. The landlord provided no receipts, no evidence of the costs, or evidence of what work was completed.

The landlord testified that the rental unit had not been re-rented as it required all this repair work. She also stated she and her husband have decided to not rent the property out again and that her daughter now stays there a few days per week.

### Analysis

In order to be successful in a claim for damages or loss under the *Act*, regulation or tenancy agreement the applicant must provide sufficient evidence to establish the following 4 points:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the *Act*, regulation or tenancy agreement;

3. The value of that loss or damage;
4. The steps taken, if any, to mitigate the damage or loss.

Section 45 of the *Act* stipulates a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the tenancy. As per the tenancy agreement submitted, I find the effective date of the notice from the tenants could not be any earlier than July 1, 2010.

As the landlord did not receive any rent for the months of May and June 2010 I find that they have shown that they have suffered a loss of income and based on the finding above that that loss results from the tenants breaching the *Act*. I find the value of that loss, based on the tenancy agreement is \$2,400.00.

Section 7 of the *Act* requires a party who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, regulation or tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The landlord testified they did not re-rent out the unit after the end of the tenancy because of the damage that needed repair. However, I find that while there may have been damage to the rental unit it was not damaged to the point that made the unit unrentable. Further the landlord has testified that they no longer intend to rent the property at all. As such, I find the landlord failed to comply with Section 7, and I therefore dismiss this portion of their application claiming for lost rent.

I find the landlord has established that there was damage to the rental unit during the tenancy and in the absence of any testimony or evidence from the tenants I accept that the damage was caused by the tenants and resulted as a breach of the *Act*, regulation or tenancy agreement.

However, the landlord has failed to provide sufficient evidence to establish the value of that damage or in fact, has failed to establish that the work completed was work specifically to repair the damage caused by the tenants. As such, I dismiss this portion of the landlords' application.

In relation to the security deposit, Section 35 of the *Act* requires that the landlord offer at least 2 opportunities to the tenants to complete a move out inspection. I find the landlord met this obligation. Section 36 stipulates that if the tenant fails to participate in a move out inspection they extinguish their right the return of their security deposit.

Section 35 also requires the landlord to complete a move out inspection report, whether or not the tenant attends the move out inspection. Section 36 states that should the landlord fail to comply with Section 35 they extinguish their right to claim against the security deposit.

However, Residential Tenancy Policy Guideline #17 states:

“In cases where both the landlord’s right to retain and the tenant’s right to return of the deposit have been extinguished, the party who breached their obligation first will bear the loss.”

In this case, I find the tenants breached their obligation first by failing to attend the scheduled moved out inspection and in accordance with the above policy statement I find the tenants must bear the loss.

### Conclusion

Based on the above I find that the landlord is entitled to retain the security deposit in the amount of \$600.00. As the landlord was mostly unsuccessful in their application I dismiss their claim to recover the \$100.00 filing fee from the tenants.

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 23, 2010.

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Dispute Resolution Officer