



# 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 hearing was convened by way of conference call to deal with the landlord's application for a monetary order for damage to the unit, site or property; for unpaid rent or utilities; for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenant for the cost of this application.

The parties each gave affirmed evidence and were given the opportunity to cross examine each other on their evidence. The landlord also called a witness who was subject to cross examination by the tenant.

The landlord provided an evidence package, which was received late by the Residential Tenancy Branch, and which the tenant testified he did not receive. The tenant objected to the admissibility of the evidence because it had not been provided to him. The landlord testified that the evidence package was sent to the tenant by certified mail but did not provide any evidence of such mailing.

In the absence of any visible evidence of mailing, I cannot conclusively find that the landlord provided any of the evidence to the tenant as required by the *Act* and the regulations. Further, the landlord (applicant) did not submit that evidence to the Residential Tenancy Branch within the time prescribed in the regulations, and therefore the evidence package cannot be considered. I have not reviewed that evidence, and it is not considered in this Decision.

**Issues(s) to be Decided**

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 unpaid rent or utilities?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

**Background and Evidence**

This month-to-month tenancy began on May 1, 2009 and ended on May 1, 2010. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$415.00.

The landlord testified that rent was payable in advance on the 1<sup>st</sup> day of each month in the amount of \$950.00, however the tenant testified that rent was \$825.00. The landlord further testified that the tenant was to pay \$825.00 when he lived there alone, and that rent increased if his son moved in, and did increase when the tenant's girlfriend moved in, and the tenant is in arrears \$825.00 for not providing sufficient notice when the tenant intended to vacate the unit.

The landlord also testified that on April 26, 2010 he posted a notice for the move-out condition inspection to take place on April 30, 2010 at 1:00, and that he gave two opportunities on that notice; one being April 30, 2010 and the other May 3, 2010. The tenant did not attend, and the landlord conducted the inspection alone on April 30, 2010.

The landlord further testified that the bars in the fridge were broken due to overloading. He also testified that a coat rack had been pulled off the wall and is claiming \$18.50 for patching the drywall. He further claims \$43.67 for repairing a hole in the door to the laundry room, as well as \$10.00 to replace a padlock and key for the shed. He also testified that cleaning was required after the tenant had vacated, which required 6 hours

of cleaning at \$90.00, stove cleaning at \$25.00, cleaning supplies in the amount of \$30.00. He stated that one room required painting and is claiming \$150.00 for 10 hours of painting and \$100.88 for painting supplies. When questioned about the hours claimed for painting a room, the landlord responded that it was a special type of paint that was required. He also testified to oil spills in the driveway, but did not provide any evidence that it was caused by the tenant or an estimate with respect to the cost.

He further testified that the tenant's barbeque was too close to the house and melted or buckled the vinyl siding, and is claiming \$655.21 for that damage. The vinyl has not been replaced or repaired, and his claim is for a quote he received in advance of the hearing.

The landlord's witness testified that she was with the landlord when the move-out condition inspection took place, and that was on April 30 or May 1, 2010. She also stated that she cleaned the unit but could not get the bathroom clean; mildew appeared on the stripping in the tub which had to be removed and replace, and she cleaned the stove. The witness further testified that she was present when the barbeque caused the vinyl siding to buckle, and that she witnessed an oil spill where the tenant parked his vehicle.

The tenant testified that he gave written notice to vacate the unit in March, 2010 with an effective date of April 30, 2010. He stated that he had applied for dispute resolution for repairs required in the unit that the landlord did not address, and the landlord discarded the tenant's notice because the landlord agreed to do the repairs.

The tenant further testified that he was not given two opportunities to conduct the move-out condition inspection as testified by the landlord. The tenant stated he received one opportunity for April 30, 2010 and none after that.

The tenant also testified that he is responsible for the missing lock and key for the shed, as well as the damaged door and coat rack, but does not agree that he is responsible

for any further damages, nor another month's rent. He further testified that the unit was re-rented by May 15, 2010.

### **Analysis**

Firstly, with respect to the security deposit, I cannot find, in the evidence that the landlord offered the tenant two opportunities to conduct a move-out condition inspection. Section 23(3) and section 35 both state that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. The *Act* places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and states that both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. Part 3 of the Regulations goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and Reports must be conducted.

In regards to the landlord's allegation that the tenant did not participate, the *Act* does anticipate such situations. In particular, section 17 of the Regulation details exactly how the inspection must be arranged as follows:

- (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
  - (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
  - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
- (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

Section 23(6) of the *Act* states that the landlord must make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (3), and
- (b) the tenant does not participate on either occasion.

Having found that the landlord has failed to establish that the landlord complied with the *Act* and the regulations, I must find that the landlord's right to claim against the security deposit is extinguished.

With respect to the landlord's claim for unpaid rent, I find that the landlord charged a different amount of rent from the tenant depending on his situation, which is contrary to the *Act*. I accept the evidence of the tenant that he gave his notice prior to April 1, 2010 and the landlord did not want to accept it and began completing repairs. Therefore, the landlord has failed to establish that any rent is owing.

The tenant conceded that he is responsible for the \$10.00 padlock and key, the hole in the door and the coat rack. For that reason, I find that the landlord has established that the tenant is responsible for \$72.17 in damages. With respect to the vinyl siding and other damages claimed by the landlord, the onus is on the claiming party to prove:

1. That the damage or loss exists;
2. That the damage or loss is the result of the opposing party's breach of the *Act*, regulation or tenancy agreement;
3. The amount of out-of-pocket expenses as a result of the damages;
4. What steps the claiming party took to mitigate, or reduce any such losses.

The onus is on the landlord to prove that the tenant was negligent, careless or otherwise responsible. He further has the onus to prove that the amount claimed is the proper amount to claim, and I find that the landlord has not established either. The landlord has failed to provide me with a move-in condition inspection report, and I have no evidence before me of the condition of the unit, inside or outside, when the tenant took possession. It may very well be that the landlord and his witness spent considerable time cleaning the unit, however, the landlord may want a vacant unit to be in pristine condition to show to perspective renters, but the responsibility of the tenant is to leave the unit reasonably clean.

## **Conclusion**

For the reasons set out above, the landlord's application to retain the security deposit is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for unpaid rent or utilities is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for damage to the unit, site or property, and the landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement are hereby allowed at \$72.17.

Since the landlord has been partially successful with his claim, I also order that the landlord recover the \$50.00 filing fee from the tenant for the cost of this application.

Having found that the landlord owes the tenant \$415.00 and the tenant owes the landlord \$122.17, pursuant to my authority under Section 72 of the *Residential Tenancy Act*, I hereby order that the amounts be set-off from one another and I order that the landlord return to the tenant the remainder of the security deposit currently held in trust forthwith.

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 27, 2010.

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Dispute Resolution Officer