

## **DECISION**

Dispute Codes      MNSD, MNDC, MNR, MND, FF

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The landlord's application was a request for a monetary order for \$5,346.03, a request that the respondent bear the \$100.00 cost of the filing fee, and a request to keep the full security deposit towards this claim.

The tenant's application is a request for a monetary order for \$3750.00.

### Background and Evidence

The landlord testified that:

- The tenant vacated the rental unit without giving any Notice to End Tenancy and breaking the lease which ran until October 31, 2010.

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- The landlords were unable to re-rent the unit until mid-August and therefore lost the full rental revenue for June 2010, July 2010, and a portion of the rental revenue for August 2010.
- The tenants also left outstanding gas and electricity bills.
- The tenants also left the rental unit in need of further cleaning and as a result the landlords had to pay for 4 1/2 hours of cleaning.
- They are withdrawing their claim for carpet cleaning.
- The tenant also left some junk behind that had to be taken to the dump and there was also the need for some minor repairs.
- The tenants had asked to use their own stove at the beginning of the tenancy however they failed to store the landlord stove properly and as a result it was destroyed and had to be replaced. It was an older stove but it was functional when the tenants replaced it with theirs.

The landlord is therefore requesting a reduced claim as follows:

Lost rental revenue for June 2010	\$1000.00
Lost rental revenue for August 2010	\$548.42
Lease breaking/re-renting fee	\$300.00
Gas utility	\$50.33
Electrical utility	\$99.00
Cleaning	\$67.50
Disposal to dump and minor repairs	\$92.50
Replace stove	\$581.28
Filing fee	\$100.00
Total	\$3839.03

The landlord further requests an order allowing them to keep the full \$500.00 security deposit towards this claim and requested a monetary order be issued for the \$3339.03 difference.

The tenants testified that:

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- They believe that the landlord breached the tenancy agreement and the Residential Tenancy Act and therefore they had the right to vacate without notice, and prior to the end of the lease.
- The landlord failed to maintain the rental property and failed to do requested repairs.
- The house did not comply with proper health, safety, or housing standards, and in fact the City did not even consider it a legal suite.
- The landlord verbally promised to do repairs and upgrades to the house however the landlord never followed through on those promises claiming that the owner could not afford it.
- They did numerous repairs themselves and the landlord did reimburse them for those repairs however the landlord also sent them a letter stating they were to do no further repairs themselves, therefore the repairs just did not get done.
- They would not have rented this rental unit if the landlord had not assured them that the upgrades and repairs would be done to the rental unit.
- There were additions to the house that, in their opinion, were not up to code and were a safety hazard.
- There are also problems with sound transfer between suites because the suites were separated by a thin hollow core door and there was no drywall/fire stop between the suite below and their bedroom above.
- They therefore do not believe that they should be held liable for any further rent or for the lease breaking/re-renting fee, as they moved for safety concerns.
- They do not dispute the claim for utilities and are fully willing to have those deducted from their security deposit.
- They dispute the claim for cleaning as they left the rental unit in a very clean condition, except for a few minor things that were inadvertently overlooked.
- They also dispute the claim for junk removal and minor repairs. They did leave some items behind but they were items that could have been used by other

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tenants or donated to charity at no cost of the landlord. And they had done numerous repairs to the rental property at no labour cost to the landlord.

- They also deny the claim for replacing the stove because the stove that was in the rental unit was very old and in poor condition and in fact the landlord told them to store the stove under the deck which is what they did. It is not their fault that this was not a safe place for the stove or that the landlords failed to remove the stove.

The tenants are therefore requesting an order as follows:

return of security deposit less utilities	\$350.67
Total	\$3850.67

## Analysis

It is my decision that the tenants have failed to meet the burden of proving that the landlords did not carry out necessary repairs when requested.

The tenants claim that they made numerous verbal requests to the landlord for repairs to the rental unit however the landlords deny receiving those requests and testified that any requests they did receive were dealt with within a reasonable timeframe.

The tenants did not put their requests for repairs in writing and therefore there is no documentary evidence of those requests having been made, so it is basically their word against the word of the landlords.

The burden of proving a claim lies with the person making the claim and when it is just that person's word against that of the other that burden of proof is not met.

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Further, although the tenants claim that the rental unit was not up to code and was therefore a safety hazard, they have supplied no evidence in support of this claim, and they have given no evidence to show that either of them has any professional qualifications to make such findings.

Further although the tenant's claim that the rental unit was in need of a substantial repairs and upgrading, they never made any application for dispute resolution to get an order for those repairs to be done, thereby mitigating any loss.

Therefore I deny the tenants request for return of 1/2 their rent and it is my decision that the tenants did not have the right to breach the tenancy agreement or to vacate the rental unit without proper notice.

I therefore allow the landlords claim for lost rental revenue and for the lease breaking/re-renting fee.

I will not allow the landlords claim for cleaning. Under the Residential Tenancy Act a tenant is responsible for maintaining "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to 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.

I will allow the landlords claim for hauling items to the dump however only to the amount of \$75.00 and I will not allow any claim for minor repairs, as I am not convinced that the tenants left the rental unit in need of any repairs beyond normal wear and tear.

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I also deny the landlords claim for replacing the stove. First of all this was an older stove and therefore is likely considered completely depreciated and of no value and secondly I find it likely that the landlords were aware that the tenants had put the older stove outside under the deck and therefore if the landlords did not consider that proper storage, they could have removed the stove and mitigated the loss.

I therefore have allowed the following portion of the landlords claim.

Lost rental revenue per June 2010	\$1000.00
Lost rental revenue for August 2010	\$548.42
Lease breaking/re-renting fee	\$300.00
Gas utility	\$50.33
Electrical utility	\$99.00
Disposal to dump	\$75.00
½ of the \$100.00 filing fee	\$50.00
Total	\$3122.75

## Conclusion

### Landlords application

I have allowed \$3122.75 of the landlords claim. The landlord may therefore retain the full security deposit of \$500.00 and have issued an order for the tenants to pay \$2622.75 to the landlord.

### Tenant's application

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



# Dispute Resolution Services

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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: October 26, 2010.

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Dispute Resolution Officer