



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes                      MND, MNDC, MNSD

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for damage to the rental unit, for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and an Order to keep all or part of the security deposit and pet deposit.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on June 01, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on June 04, 2010 the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the rental unit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the security deposit and the pet damage deposit?

## Background and Evidence

The landlord testifies that this tenancy started on July 01, 2008 and a new tenancy agreement was entered into on July 01, 2009. This was a fixed term tenancy which was due to expire on June 30, 2010. Rent for this unit was \$1,250.00 per month and was due on the first of each month. The tenants paid a security deposit of \$675.00 and a pet deposit of \$675.00 both were paid on July 01, 2008.

The landlord testifies that the tenants gave notice to end the tenancy before the end of the fixed term. They moved from the rental unit on April 30, 2010 and the unit was re-rented on May 01, 2010 at a lower monthly rent of \$1,095.00. The landlord seeks to recover the difference in the rent the tenants were due to pay up to the end of the fixed term and the amount the unit was rented to a sum of \$310.00 for the two months. The landlord also seeks to recover damages equivalent to one months' rent because the tenants broke the lease before the end of the fixed term. This includes the sum of \$547.50 paid to his property management company to re-rent the unit, the loss of rent for two months of \$310.00 and the decreased rent for a year because the unit had to be re-rented in May, 2010 instead of July, 2010 when the landlord was hoping to get an increased rent for the following year.

The landlord seeks to recover the costs for the following items which he states are recorded on the move out condition inspection report. Cleaning the rental unit (six hours at \$30.00 per hour to the sum of \$180.00; damage to three sets of blinds in the unit which were replaced at a cost of \$158.05; changing a lock at a cost of \$50.00, caulking around the bathtub at a cost of \$40.00; painting the unit due to damage at a cost of \$436.55. (Unit was newly painted at the start of the tenancy).

The landlord has provided a copy of the tenancy agreement, the move in and move out condition inspection reports and invoices for work carried out in his documentary evidence.



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## Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I find the landlord is entitled to recover the costs incurred to replace the damaged blinds of **\$158.05**, costs for painting the unit of **\$436.55** and the cleaning costs of **\$180.00** from the tenants. However, I find on the move out condition inspection report that the tenants had returned the keys to the unit and therefore it was not necessary for the landlord to change the locks at the tenant's expense and this section of the landlords claim for \$50.00 is denied. The landlord has also claimed \$40.00 to caulk the tub surround but has provided no evidence to show that the tenants had damaged the surround beyond normal wear and tear and therefore this would be the responsibility of the landlord to replace.

With regard to the landlords claim of \$1,250.00 for damages for breaking the lease, I find the clause in the tenancy agreement must be a reasonable pre-estimate of the loss at the time the contract is entered into otherwise the clause may be held to constitute a penalty and as a result be unenforceable. As the landlord as provided an invoice from his management company showing the actual costs incurred in re-renting the unit are **\$547.50** I will allow this amount to be claimed in liquidated damages pursuant to #4 of the Residential Tenancy Policy Guidelines. I further find the tenants did end the tenancy before the end of the fixed term. Although the landlord did not suffer a total loss of rent for May or June, 2010 as he managed to re-rent the unit he did have to re-rent the unit at a lower monthly rent and as such is entitled to recover the difference from the tenants up to the end of the fixed term pursuant to #3 of the Residential Tenancy Policy Guidelines to the sum of **\$310.00**. The landlord also seeks to recover a sum within this fee for any losses he may have incurred for the following year as the unit was re-rented in May, 2010 instead of July, 2010. In this instance I find the landlord is speculating on future rent and as such this section of his claim is denied.

I Order the landlord to keep the tenants security deposit and pet deposit to the sum of **\$1,350.00** plus accrued interest of **\$10.18** pursuant to section 38(4) (b) of the *Act*. A Monetary Order has been issued for the following amount pursuant to section 67 of the *Act*:



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Replacement blinds	\$158.05
Painting	\$436.55
Reduced fee for damages	\$547.50
Loss of rent for May and June, 2010	\$310.00
<b>Subtotal</b>	<b>\$1,632.10</b>
Less security deposit, pet deposit and accrued interest	\$1,360.18
<b>Total amount due to the landlord</b>	<b>271.92</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 **\$271.92**. The order must be served on the respondent and is enforceable through the Provincial Court 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: October 18, 2010.

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Dispute Resolution Officer