



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### INTERIM DECISION

Dispute Codes      For the Tenants: MNSD, MNDC, FF  
For the Landlord: MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with cross applications filed by the parties, each seeking a monetary order.

All parties along with witnesses were present, were provided the opportunity to present their evidence orally and in written and documentary form, to cross-examine the other party, and make submissions to me. However, only the Tenants gave affirmed testimony due to the length of time. This hearing is to be reconvened by mutual agreement to allow the Tenants to complete affirmed testimony, to be further cross-examined by the Landlord, for the Landlord to present her testimony in support of her claim and to be cross-examined by the Tenants.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

I note that despite warnings, the Landlord repeatedly interrupted Tenant HS' and her witnesses' testimony and the Dispute Resolution Officer and generally disrupted the hearing.

### Issue(s) to be Decided

Has the Landlord breached the Act or tenancy agreement, entitling the Tenants to an Order for monetary relief?

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and for monetary relief?

### Background and Evidence

This tenancy started on October 1, 2009, on a fixed term of one year. There is dispute as to when the tenancy ended. Tenant HS testified that the last day was August 1, 2010, and the Landlord said it was August 10, 2010. The Tenants paid a security

deposit of \$900.00 on August 15, 2009 and Tenant HS testified they paid a utility deposit of \$390.00 on October 3, 2009.

The Tenants are seeking a monetary order in the amount of \$2,580.00 for failure of the Landlord to return all or part of their security and pet damage deposit under section 38 of the Residential Tenancy Act and to recover the filing fee.

The Landlord is seeking a monetary order for \$4,750.00 for damages allegedly caused by the Tenants, for money owed or compensation under the Act, for unpaid rent and to keep all or part of the security and pet damage deposit. The amount is comprised of the following:

1. Damage to the carpet in den-- \$400.00
2. Excessive paint touch-ups--\$100.00
3. Rent for August and September-- \$3,600.00
4. Outdoor yard maintenance--\$600.00
5. Filing fee-- \$50.00

**Tenants' Evidence considered:**

1. A 7 page letter to the RTB from the Tenants with a summary of events relating to their claim and in defense of the Landlord's claim, dated September 27, 2010;
2. A handwritten accounting purportedly to reflect utility payments;
3. A Final Notice to Vacate Premise dated June 1, 2010, from the Tenants to the Landlord;
4. An email and response between Tenant HS and a potential Landlord, which indicates the Landlord's knowledge of the Tenants moving out for cause and the Landlord providing a positive reference for the Tenants;
5. An email train prior to the tenancy, purportedly showing confirmation of the terms of the tenancy and start date. The email from the Landlord indicated the amounts for utilities and a statement concerning the Landlord renewing her mortgage and possibly adjusting the rental amount;
6. Various emails from dates in June 2010 purportedly showing the Tenants looking for new accommodation and listing the reason that they were having to move due to the present house, the rental unit, being given back to the bank. Included in the emails was an email from a property manager stating that he called the Landlord in June to check on the Tenants' reference for a potential rental, and that the Landlord gave him an excellent reference. The property manager further stated that when he spoke to the Landlord there was no confusion or problem with the dates of Tenants' departure and that she seemed well aware at that time.

**Landlord's Evidence provided and considered:**

1. Registered mail receipts directed to Tenant HS and LR;

2. A September 7, 2010, To Whom It May Concern statement of dispute resolution specifics addressed purportedly to the hearing officer to provide details of Landlord's argument is support of her Application;
3. The Tenancy Agreement;
4. Document titled "Attachment to Rental Agreement and Walk through Inspection," signed by the parties on October 4, 2009;
5. A move in and move out Condition Inspection Report, with the Landlord's notation that the Tenants did not show up for the move out inspection;
6. Landlord's letter dated June 15, 2010, to Tenants stating she was not going to renew the tenancy agreement and it would end as scheduled on September 30, 2010;
7. A Notice of Final Opportunity to Schedule a Condition Inspection on August 29, 2010;
8. A Notice of Final Opportunity to Schedule a Condition Inspection on August 28, 2010;
9. Notice of Forwarding Address, dated Aug/12/02 from Tenant HS to the Landlord;
10. Printout of a Deposit Interest Calculator;
11. Handwritten Accounting of a Final Deposit Statement, dated September 8, 2010, and copies of the statements, purportedly showing a balance of phone, internet and utility bills owed by the Tenants;
12. Landlord's Telus statement;
13. Copies of 2 rent cheques from the Tenant to the Landlord, purportedly showing they were cancelled;
14. Photos of the rental unit after end of tenancy.

### **Tenants' Testimony:**

In addition to the evidence provided, Tenant HS's relevant testimony included:

Tenant HS testified that she attempted without success to set up a move out walk through on August 9 and 10, 2010, but could not as she hurt her leg.

Regarding the unmatched paint on the walls, Tenant HS testified that she and her boyfriend touched up the painted on the walls pursuant to the Landlord's request and with the paint provided by the Landlord. Tenant HS stated that when the paint dried, it did not match the colour of the walls and left marks.

Tenant HS testified that the lawns were well maintained as she had her business at home and took clients' photos in the yard as a backdrop and had received many positive comments about the setting.

Tenant HS said they became alarmed in May when someone purportedly from the bank dropped by the rental unit and said he did not know what would happen with the house as the bank was taking it back. They proceeded to start looking everyday thereafter for new accommodations. Tenant HS testified that the Landlord also told her in May that

she was selling the house and would not be renewing the lease. Tenant HS testified that they requested a written notice from the Landlord that she was selling the house and further, informed the Landlord they would be finding another place and moving as soon as possible as they did not know when the house would be taken by the bank. Tenant HS said the Landlord knew very well they were going to be moving when they found a new place.

Tenant HS testified that the Landlord said if they would provide a written notice she would not spend the deposit, which she said they provided on June 1, 2010.

Tenant HS denied leaving any damage, that the Landlord would not cooperate with a walk through inspection and that the Landlord attempted to do a walk through when Tenant HS was busy with the movers. Tenant HS testified that there was never an opportunity to complete a proper move in inspection as the Landlord was moving out when they were moving in. She further testified that the pictures provided by the Landlord were taken a month after they moved out.

Witness RD, the Tenants' present Landlord, testified that he visited the rental unit and was impressed with the garden and that he was comfortable enough to rent to them.

Witness JN, a past client, testified that she visited periodically and was always impressed with the gardens and the condition of the house. She further testified that the Tenants were upset at the way the walls turned out after using the paint the Landlord provided and that the Tenants spent a lot of time cleaning the rental unit just prior to moving. Witness JN further testified that the Tenants were under a lot of stress about being forced to move.

Witness JN further testified that the carpet was in bad condition when the Tenants moved in, so they placed removable laminate over some spots to preserve the carpet and to make it look presentable for photographing clients.

Witness DG, an occasional occupant of the rental unit, testified and verified Tenant HS' statement concerning the knock on the door in May from someone saying the bank was going to repossess the property. Witness DG further testified the Landlord still had her belongings in the rental unit when they moved in and that there was someone there doing paint touch ups on the walls.

Witness DG testified that just prior to moving out, he did some touch up paint work requested by the Landlord, but ran out of original paint left by the Landlord. He further testified the Landlord provided the extra paint, which he used, which did not match the original paint.

Witness DG testified that he was the one who put the removable laminate to preserve the carpet and to cover up the damage already on the carpet. He further testified that he took care and maintained the lawns and garden, and that the photos supplied by the Landlord were from a much later date than after move out.

Under cross-examination by the Landlord, Witness DG stated that he cut the lawns and provided maintenance when we returned from military duty and that the Tenants wanted the home in immaculate condition for the clients.

Under cross-examination by the Landlord, Tenant HS reaffirmed that she gave notice to the Landlord and that they had many conversations about the thousands in back taxes owed by the Landlord.

### Analysis

All matters were not reviewed or testimony concluded due to expiry of the hearing time; therefore the hearing has been adjourned and scheduled to reconvene in accordance with section 64 of the *Residential Tenancy Act*.

Additional documentary evidence will not be accepted from the parties in support of their claims or defences. Consideration will be given to the documentary evidence timely received prior to the hearing and as listed above.

### Conclusion

This hearing is adjourned to the date specified in the enclosed Notice of Adjourned Hearing, after which a final Decision will be rendered.

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: November 2, 2010.

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Dispute Resolution Officer