



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **Dispute Codes:**

MNR, MNSD, FF

## **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order for \$1,800.00 that included rent owed for November 2010, loss of rent for December 2010 and cleaning costs.

Both parties appeared and gave testimony during the conference call.

At the outset of the hearing, the parties advised that the tenant had vacated the unit. Therefore the landlord's request for an order of possession is now moot.

## **Issue(s) to be Decided**

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for rent or loss of rent and the cost of cleaning.

## **Background and Evidence**

The landlord submitted into evidence a copy of the Ten Day Notice to End Tenancy for Unpaid Rent dated November 2, 2010 showing \$700.00 rent owed for November and \$50.00 utilities owed. A copy of the tenancy agreement was also put into evidence showing that the tenancy began in November 2009 for a fixed term ending on November 1, 2010 with rent set at \$700.00 and a deposit of \$350.00 was paid. No other evidence was submitted.

The landlord testified that although in early October 2010 the tenant verbally told him he was ending the tenancy, no written notice was ever provided. The landlord stated that on November 1, the tenant had not returned the key, and the tenant's possessions were still in the unit. The landlord testified that the tenant also failed to pay rent on November 1, 2010 and the landlord issued a Ten Day Notice to End Tenancy for Unpaid Rent. The landlord's position was that the tenant owes \$700.00 rent for November 2010 because he did not give proper notice to vacate and failed to remove his possessions. The landlord is also claiming cleaning costs because the unit was left unclean. The landlord testified that because the tenant's personal possessions were

left in the unit, he could not show the suite nor re-rent it in December and the landlord is claiming \$700.00 loss of rent.

The tenant testified that the landlord was well aware that he was leaving at the end of the fixed term and he actually vacated in mid October 2010. The tenant testified that the unit was not shown to prospective tenants prior to his vacating it. According to the tenant, the landlord was told that the few items left in the unit could be discarded. The tenant testified that the Ten Day Notice to End Tenancy for Unpaid Rent dated November 2, 2010 was issued after the tenant had already vacated. The tenant did not agree with the charges for rent for November 2010 nor the claim for loss of rent for December 2010. The tenant also disputed the cleaning costs being claimed.

## **Analysis**

In regards to an Applicant's right to claim damages from another party, section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this resulted in costs or losses to the Applicant, pursuant to section 7.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord.

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement.

I find that the tenancy agreement was for a fixed term that ended on November 1, 2010 and the tenant had vacated and ended the tenancy prior to that date. Given the above, I find that the tenant did not violate the agreement nor the Act and would not owe rent for November 2010. I also find that the tenant would not be responsible for any loss of rent for periods beyond the end of the tenancy. Accordingly I find that the landlord's claim for compensation for the rent for November 2010 must be dismissed.

I do not accept the landlord's claim that the condition that the unit was left in prevented re-rental of the suite for November and December 2010. I find that if cleaning was required, the landlord should have taken reasonable steps to prepare the unit without undue delay, cleaning it out and storing items of value in accordance with the Residential Tenancy Regulations or discarding any refuse left by the tenant.

In regards to the landlord's claim for the cost of cleaning, I find that the landlord did not provide sufficient evidence that the unit was not clean nor verification for expenses incurred in the amount of \$350.00.

Sections 23(3) and 35 of the Act for the move-in and move-out inspections state that the landlord must complete a condition inspection report in accordance with the regulations and both the landlord and tenant must sign the condition inspection report, after which the landlord must give the tenant a copy 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 this instance neither a move-in condition inspection report nor move-out condition inspection report was completed. I find the failure to comply with these sections of the Act has hindered the landlord's claim for compensation for cleaning the unit. However, I do accept that the tenant did leave some items in the unit which the landlord was subsequently forced to remove. Accordingly I find that the landlord is entitled to retain



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\$65.00 from the tenant's \$350.00 security deposit for the cost of garbage removal, leaving \$285.00 remaining. This amount must be immediately refunded to the tenant pursuant to section 38 of the Act.

## **Conclusion**

I hereby order that the landlord is entitled to retain \$65.00 from the tenant's security deposit for the cost of garbage removal.

I hereby grant a monetary order in favour of the tenant under section 67 for \$285.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remainder of the landlord's application, including the request to be reimbursed for the cost of filing is dismissed without leave.

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: December 2010.

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Residential Tenancy Branch