



# 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 dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the pet and or security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on September 10, 2010. Mail receipt numbers and proof of delivery were provided in the Landlord's evidence. The evidence supports the male Tenant signed for his documents September 14, 2010 and the female Tenant refused delivery of the documents sent to her. Based on the aforementioned I find each Tenant has been sufficiently served notice of today's hearing, in accordance with section 90 of the *Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. No one attended the teleconference hearing on behalf of the Tenants despite them being served Notice of the hearing in accordance with the *Act*.

### Issues(s) to be Decided

1. Did the Tenants breach the *Residential Tenancy Act*?

2. If so, is the Landlord entitled to monetary compensation as a result of that breach?

### Background and Evidence

The Landlord testified she sent each Tenant copies of her documentary evidence on November 18, 2010 via registered mail. She advised her claim pertains to the property she purchased approximately July 10, 2008, where the Tenants had been living since November 20, 2007. Their tenancy was a month to month tenancy with rent payable on the first of each month in the amount of \$950.00. A \$475.00 security deposit was transferred to the Landlord when the property title was transferred. The Tenants vacated the rental unit September 15, 2008, after an Order of Possession was granted to the Landlord in a previous hearing.

The rental property is one half of a duplex and after purchasing the full duplex the Landlord moved into the other half. The duplex was built in approximately 1972 and the Landlord does not have a history of work completed on the duplex prior to her purchase. She did not know the age of the existing appliances and she did not conduct any repairs on the rental unit during the two months the Tenants occupied the unit after she purchased it.

She is seeking a monetary order of \$2,439.89 as follows:

- 1) \$376.95 to replace the dishwasher. She stated the Tenants had told her the dishwasher was broken and she later determined that there was broken glass inside which she determined ruined the motor. She did not have evidence to support that this was the cause of motor breaking.
- 2) \$22.22 to cover the cost of making reprints of the photos to send as evidence for this claim.
- 3) \$145.70 to purchase new laminate flooring to replace the boards that were damaged in the middle of the floor of the master bedroom. She did not know the

age of the floor and she stated that she had to replace the entire floor because the scratched pieces were in the middle of the floor.

- 4) \$2.51 for the purchase of a door guard. She explained that there was no door stop (guard) installed that she could see so she had to purchase one and install it to prevent further damage to the walls.
- 5) \$56.00 for the cost of the laminate flooring underlay which she replaced when she replaced the bedroom flooring.
- 6) \$107.87 for the cost of paint to repaint the living room, spare room, master bedroom, and the basement. She referred to her photos provided in evidence to support her statement as to the condition of the walls and paint which supports her view that they needed painting.
- 7) \$46.31 for the cost to purchase the disposable camera to take the pictures of the rental unit and for the cost to change the locks after the end of the tenancy.
- 8) \$87.48 (\$16.17 + 25.67 + 21.87 + 23.77) for garbage removal as supported by the photos displaying the amount of garbage left behind by the Tenants and the copies of the landfill /waste removal receipts.
- 9) \$350.00 for the cost of labour to clean, repair, and paint the rental unit after the Tenants vacated. She stated that it took 4 adults one full day to remove debris and clean while it took 2 adults one full day to repair and paint the walls.
- 10) \$30.00 to replace the downstairs bedroom door. Her photos display the numerous holes in the door. The Landlord did not know the age of the damaged door.
- 11) \$68.51 to recover the cost of the outstanding water bill which was placed on the Landlord's taxes when the Tenants failed to pay it as required by the tenancy agreement. The Landlord referred to her evidence which included a copy of the water bill statement.
- 12) \$325.00 for partial loss of rent for September 2010. The Landlord testified that she did not advertise the rental unit to re-rent it but rather the Landlord repaired the unit and occupied that side of the duplex herself. She later advertised and rented out the side of the duplex she had originally occupied.

- 13) \$60.00 for miscellaneous painting and repair supplies used in the unit. The Landlord did not provide receipts for the miscellaneous supplies claimed.
- 14) \$11.34 for advertising costs to rent out the side of the duplex the Landlord had previously occupied.
- 15) \$500.00 for personal stress of having to deal with evicting the Tenants and cleaning up their mess.
- 16) \$200.00 of the waste debris left behind by the Tenants. The Landlord later withdrew this request as she acknowledged that the debris was not stored but rather the waste was removed.

### Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports the Tenants entered into a written tenancy agreement with the previous owner of the property. There is no evidence before me to support if a move-in

inspection report was conducted at the onset of the tenancy nor is there evidence which supports the new owner, the Landlord, completed a move-in or move-out inspection report.

In the absence of evidence to support the age of the dishwasher or evidence to support what caused the motor to fail, I find there is insufficient evidence to support the test for damage or loss, as listed above and I hereby dismiss the Landlord's claim of \$376.95 for a new dishwasher.

After careful consideration of the testimony, photographs, and evidence before me; and in the absence of a move-in inspection report, I find there is insufficient evidence to support that the Tenants damaged the floor in the master bedroom, or that they caused the damage to the bedroom door in the basement. I note that the Landlord stated she viewed the property prior to purchasing it which leads me to consider that the purchase price would have been adjusted to reflect the condition of the property. Therefore I find the Landlord provided insufficient evidence to prove she suffered a loss and I dismiss her claim of \$234.21 (\$145.70 + 56.00 + 30.00 + 2.51) for laminate flooring, underlay, a new door, and a door guard.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item. The useful life of interior paint is four years in accordance with the *Residential Tenancy Branch Policy Guidelines*. That being said, in the absence of a move-in inspection report of evidence to support when the unit was last painted, I find the Landlord provided insufficient evidence to support the Tenants are solely responsible for the condition of the walls and I therefore dismiss the Landlord's claim of \$167.87 (\$107.87 + 60.00) for painting and supplies, and labour.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. The evidence supports that in this case the

Tenants vacated the rental unit without cleaning and they left debris and a mess behind. Based on the aforementioned I find the Landlord has proven the test for damage or loss in the amount of \$437.48 ( $16.17 + 25.67 + 21.87 + 23.77 + 250.00 + 100.00$ ) for garbage removal and labour to clean the unit.

The Landlord has sought costs for photos, personal stress dealing with the Tenants, and cost of a camera and lock, totalling \$568.53 which are all required duties of being a landlord. I find that the landlord has chosen to incur these costs that cannot be assumed by the tenant. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. The cost of changing locks prior to a tenancy or at the end of a tenancy is the responsibility of the Landlord in accordance with the Act. Therefore, I find that the landlord may not claim these costs.

The evidence supports the Tenants were required to pay for the cost of the water utility and that an amount of \$68.51 remained unpaid and was transferred to the Landlord. Based on the aforementioned I find the Landlord has met the test for loss and I approve her claim of \$68.51.

The Landlord confirmed she occupied the rental unit after it was repaired and that her expenses for the cost of advertising were for the other side of the duplex. Based on the aforementioned I find the Landlord provided insufficient evidence to her entitlement of loss of rent and advertising costs as she did not advertise the rental unit but rather she chose to occupy the unit. Therefore, I dismiss her claim of \$336.34 ( $\$11.34 + 325.00$ )

The Landlord withdrew her request for \$200.00 for storage.

The Landlord has been partially successful with her application therefore I award recovery of the filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit as follows:

Debris removal and clean up	\$437.48
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$555.99</b>
Less Security Deposit of \$475.00 plus interest of \$7.96	- 482.96
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$73.03</b>

### Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$73.03**. The order must be served on the respondent Tenants 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: December 07, 2010.

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Dispute Resolution Officer