



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; authorization to retain the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided an opportunity to be heard and to respond to submissions of the other party.

Upon review of the evidence served upon the Residential Tenancy Branch, the tenants confirmed they were served with the Notice of Hearing, the landlord's application and a list of monetary claims by the landlord but denied receiving any supporting evidence.

The landlord testified that he believed he had sent his documentary evidence to the tenants with the hearing package but acknowledged he did not send the tenants the disk containing photographs that was given to the Residential Tenancy Branch.

I noted that the landlord's documentary evidence and disk were served upon the Residential Tenancy Branch together on December 15, 2010, approximately 4.5 months after the landlord made this application. It was not clear why the landlord waited so long to serve evidence or why the landlord did not give all of the same evidence to the tenants.

As the parties were informed during the hearing, it is upon the party who served evidence to prove service upon the other party. The landlord did not satisfy me that the tenants were in receipt of the landlord's evidence. Therefore, I proceeded to hear from the parties and accept only oral evidence with respect to the landlord's monetary claims.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for unpaid rent?
2. Has the landlord established an entitlement to compensation for cleaning and repairs against the tenants?
3. Is the landlord authorized to retain the security deposit?

## Background and Evidence

The parties provided the following undisputed evidence. The tenancy commenced September 1, 2009 and the tenants paid a \$400.00 security deposit. The monthly rent was set at \$800.00 due on the 1<sup>st</sup> day of every month. The parties completed a move-in inspection report together; however, only the landlord participated in the move-out inspection. The tenants paid one-half of July 2010 rent and vacated the rental unit July 13, 2010.

The landlord is seeking to recover the following amounts from the tenants:

Unpaid rent – July 2010	\$ 400.00
Carpet cleaning	134.00
Furniture removal	80.00
Furniture disposal	156.00
Cleaning	60.00
Small repairs and touch ups	40.00
Total claim	<u>\$ 870.00</u>

The landlord made the following submissions:

- On June 17, 2010 the tenants gave a Notice to End Tenancy effective July 15, 2010. The tenants only paid one-half of the rent owed for July 2010. Despite showing the unit to prospective tenants during the tenancy, the unit was not re-rented until August 1, 2010.
- The tenants were given a letter about leaving the unit clean at the end of the tenancy and an inspection but the tenants vacated on July 13, 2010 before an inspection was performed.
- Tenants are required to clean the carpets at the end of every tenancy and the male tenant smoke in the unit.
- The landlord submitted that the tenants left three couches, a table and a mattress set behind in the rental unit which had to be removed and disposed of.
- The unit required additional cleaning such as the fridge, stove and cupboards.
- There were holes in the walls and the tenants had painted the unit a strange colour.

The tenants responded as follows:

- The landlord confronted the tenants about paying only one-half of July 2010 rent and turned off their electricity.
- The parties talked about doing the move-out inspection and the landlord told the tenants that he would do the inspection without them and would send them a copy of the move-out inspection report.

- The tenant denied smoking in the unit and does not feel obligated to clean the carpets after a short tenancy.
- There were two couches in the rental unit, not three. One couch was abandoned by the previous tenants and they took the other couch away. The tenants acknowledge that the mattress set was there when they left.
- The unit was left clean and when their tenancy began it was dirty.
- The tenants did not cause any holes in the walls and the unit was painted the strange colour when they moved in and the tenant merely used left over paint found in the unit to touch up the unit.

The landlord acknowledged that he turned off the tenants' electricity briefly and explained that he did so because the tenants were avoiding him and would not speak with him. After the tenant came to speak to him and pay some of the rent he turned the electricity back on.

## Analysis

Under section 45 of the Act, a tenant may end a month-to-month tenancy by giving one full month of notice. The effective date of the notice must be at least a month after giving the notice and be on the last day of the rental period. Where a tenant is required to pay rent on the 1<sup>st</sup> of the month, as in this case, the effective date of the tenant's notice is the last day of the following month.

Having heard from the parties, I am satisfied the tenants gave short notice to end the tenancy and violated the Act in this regard. However, I also find the landlord violated section 27 of the Act by terminating an essential service. The landlord is not permitted to terminate an essential service, such as hydro, in any situation. As the landlord was informed during the hearing, the landlord has remedies under the Act when the tenants do not pay rent in full and notices may be served upon tenants in many acceptable ways.

Section 7 of the Act provides that where a party violates the Act and causes the other party to suffer a loss, the non-complying party must compensate the other party for their loss. However, the party making a claim for compensation must show that they took every reasonable step to minimize their loss.

Considering the above, I find the tenants violated the Act by ending the tenancy with insufficient notice; however, the landlord's claim for loss of rent is denied because the landlord failed to minimize the loss. When a landlord terminates an essential service because the tenants will not speak with him, I cannot image that the tenants would continue to occupy the rental unit any longer than absolutely necessary. Therefore, I order the tenancy ended and the tenants' obligation to pay rent ended on July 13, 2010.

With respect to the remainder of the landlord's claims, I find as follows.

I do not have inspection reports, photographs or witness statements to satisfy me of the condition of the rental unit at the beginning or end of the tenancy as the landlord's documentary and photographic evidence was not accepted or considered in making this decision. The evidence before consisted of verbal testimony only, most of which was in dispute.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the landlord has the burden of proof. The burden of proof is based upon the balance of probabilities.

The tenants acknowledged leaving behind some possessions in the rental unit and it is the tenants' responsibility to remove all possessions from the unit. However, the landlord did not satisfy me that the tenants left as many possessions behind as he claimed. Therefore, I award the landlord \$100.00 for furniture removal and disposal.

The disputed testimony concerning the cleanliness of the unit and damages to the unit does not satisfy me that the landlord is entitled to compensation for these items from the tenants and I dismiss this portion of the landlord's claim.

In the absence of a copy of the tenancy agreement I have turned to the Residential Tenancy Policy Guideline with respect to the expectations regarding carpet cleaning. The policy guideline provides that, generally, tenants are not required to clean the carpets for tenancies less than one year in duration if the tenants did not smoke or have pets in the unit. The disputed testimony did not satisfy me that the tenants smoked in the unit and since the tenancy was less than one year I do not award the carpet cleaning costs to the landlord.

In conclusion, the landlord has been awarded \$100.00 of his claim and is ordered to return the balance of the tenants' security deposit to the tenants forthwith. The tenants are provided a Monetary Order for the balance of \$300.00 to serve upon the landlord. The Monetary Order may be enforced in Provincial Court (Small Claims) as an Order of that court.

I make no award for the filing fee.



# Dispute Resolution Services

Page: 5

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## Conclusion

The landlord was awarded \$100.00 and must return the balance of the security deposit to the tenants immediately. The tenants have been provided a Monetary Order in the amount of \$300.00 to serve upon the landlord and ensure payment is made.

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 30, 2010.

---

Residential Tenancy Branch