



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Landlord applied for a monetary order for damage to the unit, for money owed or compensation for damage or loss under the Act, to keep all or part of the security deposit and to recover the cost of the filing fee from the Tenants.

Tenant KS applied for a monetary order for money owed or compensation under the Act or tenancy agreement, for the return of all or part of the security deposit, other monetary compensation and to recover the filing fee for the Application.

Tenant KS and the Landlord appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

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.

### Issue(s) to be Decided

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

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### Background and Evidence

There is no written tenancy agreement, but I heard testimony that this month to month tenancy began on June 1, 2010, and ended on July 31, 2010. I heard undisputed testimony that Tenant KS and Tenant TC each paid one-half of the monthly rent and one-half of the security deposit and that the Landlord paid certain sums to the Tenants, in both names. I heard testimony that the monthly rent was \$1,300.00, that the security deposit was \$750.00, which is \$100.00 over the amount allowed under the Act, and that each Tenant paid one half of these amounts.

The Landlord's testimony indicated that he considered both Tenants equally responsible under the tenancy agreement and Tenant KS considered that he was responsible for only one half of the obligations under the tenancy agreement.

I heard testimony that Tenant KS provided the Landlord with proper written notice of his intent to vacate the rental unit, on June 30, 2010, for an effective move out date of July 31, 2010. I heard testimony that Tenant TC provided improper written notice of his intent to vacate the rental unit, on July 27, 2010, for an effective move out date of July 31, 2010.

I note that the Landlord made application with both Tenants listed as Respondents and that Tenant KS made application listing himself only as Applicant.

### Landlord's Application

The Landlord is claiming for loss of rent in the amount of \$650.00 for August 2010 due to the improper notice of Tenant TC, \$120.00 for a service charge for ending the occupancy early, \$25.00 for an oven cleaning charge and to recover the filing fee.

The Landlord's relevant evidence included a copy of a statement from Tenant TC that he does not claim his half of the security deposit, an unsigned tenancy agreement, an application for tenancy for Tenant KS, the 2 notices to end tenancy by each Tenant, a signed handwritten document which appears to be an addendum to a tenancy agreement, dated on May 7, 2010 and signed by each Tenant, a copy of a receipt for the July 2010 rent from the Tenants in the amount of \$980.00, a receipt for \$320.00 from the Landlord to the Tenants for the Tenants' cleaning, painting and cooperation for the bathroom, and two notices for inspection to check on cockroaches.

The Landlord testified he attended to the Tenants' complaints about cockroaches by giving written notices and attending the rental unit to provide extermination services himself. The Landlord further testified that he inspected the rental unit with the Tenants prior to the tenancy and found no evidence of cockroaches.

The Landlord testified that the Tenants did not have a shower for 10 days, but that they had use of the bathtub during the time tile work was being done.

I note that the Landlord, upon query, acknowledged that there was no move in or move out inspection.

## Tenant's Application

Tenant KS is claiming \$430.00 for loss of the use of a shower for 10 days at \$43.00 per day, \$650.00 for having cockroaches in the rental unit, representing a devaluation of the tenancy by 50%, and \$576.68 for painting materials. I note that the Tenant testified and supplied evidence of his request for his equal portion of the security deposit returned, but this amount was not listed in his application.

The Tenant's relevant evidence included a letter from the Tenant to the Landlord, 2 Notices of Inspection referencing a cockroach issue, receipts from Home Depot for painting and cleaning material and photographic evidence of the state of the rental unit at the time of and during the occupancy. The Landlord acknowledged receiving and viewing the photographic evidence on DVD format, and I have accepted the same into evidence.

In support of his claim, the Tenant's relevant testimony indicated that the Tenants and the Landlord viewed the rental unit on May 8, at which time the current occupants were being evicted due to drug use. The Tenant testified that the Landlord stated there were no cockroaches and acknowledged that the rental unit was not habitable at that time due to those tenants' drug use. The Tenant testified that the Landlord said the rental unit would be cleaned up prior to the start of the tenancy.

The Tenant testified that the rental unit was filthy when the Tenants moved in and had to spend 2 days cleaning the unit and repairing the walls. The Tenant testified that the Landlord promised to pay for painting and cleaning materials after the work was completed, which has been done.

The Tenant testified that the rental unit was not liveable for at least a half a month, that the Tenants could not take a shower for at least 10 days due to the extensive problems with the tile in the shower unit and the problem was so bad, the rental unit was basically used for storage.

The Tenant claimed that the Tenants signed separate applications for tenancy and that he is entitled to his portion of the security deposit.

In response the Landlord claimed that he promised to only pay the Tenants \$100.00 for painting, after the work had been completed. Upon query the Landlord acknowledged since the end of the tenancy on July 31, 2010, he has not had to repair or repaint the rental unit.

## Analysis

Based on the above testimony, evidence and photographs, and on a balance of probabilities, I find as follows:

When making a claim for damages or loss under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages or loss requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

## Landlord's claim

The Landlord, under the *Act*, is responsible for preparing a written tenancy agreement, which in this case he failed to do.

Section 45 of the *Act* stipulates that a tenant may end the tenancy by giving the landlord a written notice ending the tenancy at least one month after the date the landlord receives the notice and is the day before the day in the month that the rent is due.

I accept the evidence and testimony of the Landlord and find the Tenants to be co-tenants and as such, the Tenants are jointly and severally liable for meeting the requirements of the tenancy agreement and obligations to the Landlord. This means the Landlord may recover the full amount of money due from both, or any one of the Tenants.

I find that when Tenant KS timely submitted proper notice to end the tenancy, he submitted on behalf of both tenants under the joint and several liability status of the Tenants. Therefore I find the Landlord has not proven a loss under the *Act* for loss of rent in the amount of **\$650.00**.

With verbal agreements, as in this case, I find that when verbal terms are clear and when both the Landlord and Tenant fully agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen.

Therefore I find I am not able to determine that the term in the handwritten document submitted into evidence by the Landlord regarding a service charge of \$120.00 relates to a valid and material term of the tenancy agreement, particularly if the same refers to

some type of liquidated damages. Therefore I find the Landlord has submitted insufficient evidence and **deny** his claim of **\$120.00** for a service charge.

The Landlord did not submit any evidence that the oven was clean prior to the tenancy, the state of the oven after the tenancy or that the oven was ever cleaned. Therefore I **deny** his claim of **\$25.00**.

As the Landlord was unsuccessful in his Application, I decline to award him the filing fee.

### Tenant's claim

Section 32 of the Act requires a Landlord to provide a rental unit that complies with health, safety and housing standards. A Landlord must attend promptly to complaints from Tenants and make quick efforts to address the problem.

I find the Tenant provided documentary proof that the Landlord breached section 32 by failing to provide the Tenants with a rental unit that complied with health and housing standards at the beginning of the tenancy. The photographs depicted a rental unit needing extensive renovation, which I find the Landlord promised to have completed before the tenancy began. I find the Tenants were compelled to clean, repair and paint the rental unit in order to occupy the rental unit and I accept the testimony of the Tenant that the Landlord promised to pay for painting materials.

Given the state of the walls depicted in the photographic evidence prior to the tenancy and the work required by the Tenants to make the rental unit habitable, I do not accept the Landlord's testimony that he offered to pay only \$100.00 for painting. I am further persuaded by the Landlord's testimony that he has not repainted or repaired the rental unit since the end of the tenancy on July 31, 2010. Therefore, I find the Tenant has established a claim for painting materials through his submissions in the amount of **\$576.68**.

I accept that the unfinished bathroom diminished the value of the tenancy and I find the amount of \$25.00 per day for 10 days reasonable, totalling \$250.00. I find the Landlord paid the Tenants the amount of \$100.00 for their cooperation in the completion of the bathroom and therefore, I find the Tenant has established a monetary claim in the amount of **\$150.00**.

I accept that the rental unit had a cockroach infestation, but I find that the Landlord acted in a timely manner to address extermination. I do not make a finding that the Landlord's response was inadequate as the Tenant did not provide sufficient evidence to establish the extent of the cockroach infestation or that he suffered a diminished value of the tenancy in the amount claimed. Therefore I **dismiss** his claim for \$650.00.

In addressing the issue of the security deposit, the security deposit is held in trust for the Tenants by the Landlord and the Landlord may only keep all or a portion of the security deposit through the authority of the Act. Here the Landlord did not have authority under the Act to keep any portion of the security deposit, but there was evidence to show that Tenant TC authorized the Landlord in writing to retain his portion, which in this case is \$375.00. Therefore I find the Tenant has established a monetary claim for one half of the security deposit in the amount of **\$375.00**.

I find the Tenant was mostly successful in his Application and I award the filing fee to be reimbursed to him.

Just as the Tenants are joint and severally liable for the obligations of the tenancy, Tenants KS and TC are also afforded joint and several entitlement. Therefore, I find that even though Tenant TC did not make application, the Tenants have established a monetary claim and are entitled to a monetary order as follows:

Painting materials	\$576.68
Diminished value for loss of use of the bathroom	\$150.00
One half of the security deposit	\$375.00
Filing Fee	\$50.00
<b>TOTAL Monetary Order In Favour Of The Tenants</b>	<b>\$1,151.68</b>

Pursuant to the policy guideline, I have provided the Tenants with a monetary order under section 67 for these terms. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

## Conclusion

The Landlord's Application is dismissed.

Tenants KS and TC are granted a monetary order for **\$1,151.68**.

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: January 12, 2011.

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Residential Tenancy Branch