



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

**Dispute Codes**      MND, MNDC, MNR, MNSD, O, FF

### **Introduction**

This hearing dealt with the Landlord's Application for a monetary order for damage to the unit, for unpaid rent, 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 Tenant.

The female Landlord and the male Tenant 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.

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

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

### **Background and Evidence**

The tenancy began on May 1, 2010, monthly rent was \$2,000.00 due on the first day of the month, and a security deposit of \$1,000.00 was paid on May 1, 2010.

The tenancy was a fixed term of one year, to end on April 30, 2011; however the Landlord testified that she was unaware of when the Tenants moved out, but was of the belief it was in August and the Tenant testified that he and the female tenant moved out on July 28, 2010.

### **Landlords' Evidence considered:**

1. Lease Agreement
2. Condition Inspection Report
3. Letters, photos and invoice from the City of Langford
4. Hydro bill
5. Carpet cleaning receipt
6. NSF cheque for August 2010 rent
7. Cleaning receipt, receipt for showing the rental unit and bank record for the payment
8. Email communication between the Landlords and Tenants

9. New lease
10. Bank record
11. Photo of a hole in the master bedroom

**Landlord's Testimony:**

In addition to the evidence provided, I heard testimony from the Landlord that while she and the male Landlord were on vacation, she discovered the August rent cheque had been returned for insufficient funds; however she was unable to contact the Tenants at that time, on August 6, 2010, due to lack of electricity at the vacation home. I heard testimony from the Landlord that she further became aware there was a problem with the tenancy when she received a letter from the city by-law office informing her there was a large amount of garbage in the front yard which had to be removed immediately.

I heard testimony from the Landlord that she tried to contact both Tenants, without success, and subsequently she had a relative go inspect the premises as the Landlords lived in another part of the country. The relative, on August 18, 2010, confirmed with neighbours that the Tenants had moved out.

After confirmation of the vacancy, I heard testimony from the Landlord, that she immediately advertised the rental unit, and after several attempts, was able to re-rent the rental unit beginning September 1, 2010. However, the Landlord testified that the monthly rent had to be reduced to \$1,800.00 per month due to the slower rental market and she is seeking compensation for the lost revenue for the balance of the original tenancy term.

I heard testimony from the Landlord that she had no way of contacting the Tenants and did not hear from them until September 9 when she deposited the August rent cheque on September 1, at which time the Tenants requested a return of the funds, providing for the first time a forwarding address. It was at this time, according to the Landlord's testimony, that they were able to file for dispute resolution.

I heard testimony from the Landlord that due to the Tenants' abandonment, the Landlords incurred expenses in cleaning, advertising and showing of the rental unit and were required to re-key the locks as the keys had not been returned.

I heard testimony from the Landlord that she had permission from the Tenants to keep the \$1,000.00 security deposit, that she has the \$2,000.00 from the August rent deposited on September 1, 2010, and that she has applied those amounts to the claim.

The Landlords' claim is for the following:

Lost rent for August 2010	\$2,000.00
Garbage removal from City of Langford	\$104.00
Re-keying of the lock	\$112.18

Carpet cleaning	\$112.00
Cleaning/Yard work/Showing	\$200.00
Damage to master bedroom wall	\$250.00 (est.)
Utility bill	\$47.32
Postage	\$37.02
Filing fee	\$50.00
Sub-total	<b>\$4,512.52</b>
Less rent cheque kept and sec. dep.	(\$3,000.00)
<b>Total</b>	<b>\$1,512.52</b>

### **Tenant's Testimony:**

I heard testimony from the Tenant that the Tenants tried calling the Landlords in June, but that no one answered and they were unable to give notice. I heard testimony from the Tenant that he believed the receipts were based on lies as they took care of the rental unit as if it was their own and left the place as clean as when they took possession.

I heard testimony from the Tenant that the Landlords did not give them a new key as they requested at the beginning of the tenancy and that they had to re-key the rental unit themselves.

I heard testimony from the Tenant expressing anger with the Landlords' deposit of a rent cheque of \$2,000.00 in September, stating that they did not have authority to do so.

The Tenant admitted he gave permission to the Landlords to keep the security deposit as a way of compensating the Landlords for vacating early.

I heard testimony from the Tenant that he maintained and mowed the lawn and denied the lawn needed cutting.

### **Analysis**

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

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.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss, in this case the Landlords, has the burden of proof to establish their claim on the civil standard:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 45 (2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives notice, and is not earlier than the date specified in the tenancy agreement.

Therefore, I find that the Tenants failed to comply with the Act by ending the tenancy early and without notice at the end of July and that the Landlords have established a claim for **\$2,000.00** in lost rent for August.

I find the Landlord submitted sufficient testimony and documentary evidence that they mitigated their loss by immediately advertising the rental unit and were unable to find suitable tenants at the former rent of \$2,000.00. I therefore find the Landlords have established their claim for loss of rent for the balance of the tenancy agreement in the amount of **\$1,600.00** (\$200.00 for 8 months).

I find the Landlord submitted sufficient testimony and documentary evidence that they were charged by the City of Langford for garbage removal from the garbage left behind by the Tenants. I therefore find the Landlords have established their claim for garbage removal in the amount of **\$104.00**.

Residential Policy Guidelines require a tenant to periodically clean the carpets to maintain reasonable standards of cleanliness. I accept that the Landlords were required to clean the carpets and I therefore find the Landlords have established their claim for carpet cleaning in the amount of **\$112.00**.

Residential Policy Guidelines require a tenant to return all keys at the end of the tenancy; including those he or she had cut at his or her own expense. Therefore I find the Landlords have established their claim for **\$112.18**.

I accept that the Landlords were required to mow the lawn, but I do not find this was the responsibility of the Tenants a month after vacating in order to ready the rental unit for re-renting. I further find that the Landlords failed to establish the extent that the rental unit required cleaning and that the Tenants left the rental unit unclean. I note that an email from the Landlord to the Tenants referred to the clean rental unit. I further find that showing the home is a cost of conducting business in the rental market. Therefore I find the Landlords have failed to establish this loss and I **dismiss** their claim for **\$200.00** for yard work/cleaning/showing.

I find that keeping the utilities turned on in their rental unit during vacancy is a cost of the Landlord's conducting business in the rental market. Therefore I find the Landlords have failed to establish their entitlement and I **dismiss** their claim for **\$47.32**.

In the absence of documentary proof, I find the Landlord failed to submit sufficient evidence of wall damage and in what amount and I **dismiss** their claim for **\$250.00**.

I can find no authority under the Act allowing me to award a monetary claim for postage and I therefore **dismiss** the Landlord's claim for **\$37.02**.

I find the Landlords have been substantially successful in their Application and I award them the filing fee of **\$50.00**.

The Landlords' retained the security deposit of \$1,000.00 and received \$2,000.00 in September by placing the August rent cheque in their account.

I find the Landlords have established a total monetary claim of **\$3,978.18**, which includes \$2,000.00 in lost rent for August, \$1,600.00 for reduced rent, \$104.00 for garbage removal, \$112.00 for carpet cleaning, \$112.18 for re-keying the locks, and \$50.00 for the filing fee.

I find the Landlord's were entitled to retain the security deposit pursuant to the written consent of the Tenants; however I find that the Landlords contravened the Act and Policy Guideline 3 by depositing the rent cheque after the tenancy ended.

While I make no finding on the Tenants' right to pursue a claim against the Landlords for contravention of the Act and policy guideline, I allow the Landlords to retain the \$3,000.00 already received, and grant them a monetary order for the balance due of **\$978.18**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Landlords are granted a monetary order for **\$978.18**.

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: February 02, 2011.

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Residential Tenancy Branch