



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit. Despite having been served with the application for dispute resolution and notice of hearing by registered mail on November 19, 2010, the tenant did not participate in the hearing.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The landlord's undisputed evidence is as follows. The tenancy began on or about September 1, 2008 and ended on or about November 21, 2008 when a notice to end tenancy took effect and the landlord discovered that the tenant had vacated the rental unit. The tenancy agreement was for a fixed term ending on August 7, 2009, rent was set at \$1,550.00 per month and the tenant paid a \$775.00 security deposit. At the outset of the tenancy, the tenant gave the landlord post-dated cheques which the landlord deposited with her bank, to be negotiated on the appropriate dates.

The tenant's rent cheque for the month of November was returned for insufficient funds and on or about November 10 the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent.

The landlord cancelled the post-dated cheques which she had deposited with her bank at a cost of \$21.00 and incurred an NSF fee of \$7.00. The landlord seeks to recover these costs.

The landlord further seeks to recover unpaid rent for November and loss of income for December – February inclusive as despite advertising in newspapers and online, she was unable to find tenants until March 5, 2009.

The landlord testified that the tenant failed to clean the rental unit, left items in the unit and debris in the yard which had to be removed and caused significant damage to the rental unit. The damage included stains on the carpets, numerous holes in the walls, leaving wiring exposed, stains on the walls and doors, damage to shelving and destruction of the lock and handle mechanism on the sliding glass door.

The landlord testified that she was unable to repair the rental unit in December as tradespeople are not readily available during that month.

The landlord testified that when the tenant vacated the rental unit, she contacted BC Hydro and Terasen Gas to arrange to have the accounts for the utilities placed back in her name. She was successfully able to transfer the BC Hydro account, but was told by Terasen Gas that because the tenant had not closed her account, they would not permit her to assume responsibility for the natural gas service at the rental unit. The landlord testified that in January, her agent attended at the rental unit and discovered that there was water on the floor near the hot water tank. The landlord immediately suspected that the hot water tank had cracked from the cold and contacted Terasen Gas to discover that the tenant had not paid the arrears on the account and the natural gas service had been disconnected. The landlord seeks to recover the costs associated with replacing the hot water tank.

The landlord seeks to recover the following:

Loss of income, November – February inclusive	\$6,200.00
NSF fee (\$7.00) and cost of cancelling deposit of cheques held by bank (\$21.00)	\$ 28.00
Agent's fees invoiced November 23, 2008	\$ 240.00
Handyman's fees invoiced January 25, 2009	\$ 632.00
Labour for repainting, carpet cleaning, house cleaning, garbage removal and hot water tank installation invoiced March 4, 2009	\$ 931.00
Supplies and water heater invoiced March 31, 2009	\$ 562.76
Supplies invoiced February 28, 2009	\$ 90.24
Hot water tank installation invoiced March 30, 2009	\$ 156.15
Sliding door repair invoiced June 17, 2009	\$ 159.57
Re-keying locks invoiced December 6, 2008	\$ 294.01
Filing fee	\$ 100.00
<b>Total:</b>	<b>\$9,558.63</b>

I note that while in her list which details her monetary claim the landlord indicated that she was seeking recovery of a \$164.90 charge which was to be located in exhibit L-B-

#2, there was no such exhibit included in her evidence and I therefore have not considered that claim.

### Analysis

I accept the landlord's undisputed testimony. I find that the tenant's November rent cheque was returned by the bank and that the tenant should be held liable for the loss of rent for November and the NSF fee. I find that the landlord is entitled to recover the cost of cancelling the post-dated cheques which had been deposited with her bank.

I find that the landlord acted reasonably to minimize her losses and I find that the tenant should be held responsible for the months of December – February in which the landlord lost rental income.

In entering in to the rental agreement, the landlord began operating a business. The landlord chose to conduct her business remotely, using the services of an agent to perform those actions which she herself would normally have done, such as serving documents, inspect the unit and arranging for tradespeople to attend at the unit. I find that the landlord should have anticipated the cost of utilizing an agent to perform those functions and if she wanted to recover the cost of that agent, could have set a higher rental rate. I find that the landlord may not recover these fees as they are characterized as the cost of doing business as a landlord. I dismiss the claim for agent's fees which includes the entire invoice dated November 23, 2008. The invoice dated January 25, 2009 includes some of these agent's fees as it is clear that party was charging for travel time and the cost of performing functions such as shovelling snow and inspecting the unit. For the January 25, 2009 invoice, I dismiss all but the \$64.00 in charges for dump fees and the cost of light bulbs and the labour costs for removing the mattress and door, pulling nails and staples and sweeping. The charges for the labour are mixed in with other charges and it is impossible to determine how much of the hourly charge was spent performing the ordinary duties of a landlord and how much in actual labour for repairs and dumping garbage. I find that a total award of \$120.00, which represents 3 hours of work, will adequately compensate the landlord for a total award of \$184.00 for the January 25, 2009 invoice.

I find that the tenant caused the damage to the rental unit as alleged by the landlord and I find that the landlord is entitled to recover all of the costs of supplies and labour associated with performing all repairs save the labour associated with replacing the hot water tank for the reasons in the paragraph which follows. I therefore find that the landlord is entitled to recover \$\$871.00 for the March 4, 2009 invoice, \$30.77 for the March 31, 2009 invoice, \$90.24 for the February 28, 2009 invoice and \$159.57 for the June 17, 2009 invoice.

Turning to the hot water tank, in order to prove her claim the landlord must either prove that the damage to the hot water tank was caused either through the direct action of the tenant or that it was the reasonably foreseeable result of her negligence. The landlord did not allege that the damage was caused by the tenant's direct action. I am unable to find that the tenant could have reasonably foreseen that the landlord as the owner of the property would have been unable to assume responsibility for the natural gas account. While the events are unfortunate, the costs incurred are too remote and I find that the claim for the costs associated with replacing the hot water tank must be dismissed.

I find that the tenant failed to return the keys to the landlord and find that the landlord is entitled to recover the \$294.01 cost of re-keying the locks.

I find that as the landlord has been substantially successful, she is entitled to recover the \$100.00 filing fee paid to bring her application.

I note that while in her list which details her monetary claim the landlord indicated that she was seeking recovery of a \$164.90 charge which was to be located in exhibit L-B-#2, there was no such exhibit included in her evidence and I therefore dismiss that claim as unproven.

I award the landlord the following:

Loss of income, November – February inclusive	\$6,200.00
NSF fee (\$7.00) and cost of cancelling deposit of cheques held by bank (\$21.00)	\$ 28.00
Handyman's fees invoiced January 25, 2009	\$ 184.00
Labour for repainting, carpet cleaning, house cleaning and garbage removal invoiced March 4, 2009	\$ 871.00
Supplies invoiced March 31, 2009	\$ 30.77
Supplies invoiced February 28, 2009	\$ 90.24
Sliding door repair invoiced June 17, 2009	\$ 159.57
Re-keying locks invoiced December 6, 2008	\$ 294.01
Filing fee	\$ 100.00
<b>Total:</b>	<b>\$7,957.59</b>

### Conclusion

The landlord has established a claim for \$7,957.59. I order that the landlord retain the \$775.00 security deposit and interest of \$4.07 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$7,178.52. This order may be filed in the Small Claims Court and enforced 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: March 25, 2011

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Residential Tenancy Branch