



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MND MNR MNSD 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 deposits, 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 November 30, 2010. Mail receipt numbers were provided in the Landlord's documentary evidence. The Agent provided testimony that the Canada Post tracking confirms the hearing documents were signed for by the Tenants on December 1, 2010.

The Landlord and his Agent appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach?

### Background and Evidence

The Agent testified the parties entered into a written fixed term tenancy agreement on October 15, 2008 which was effective November 1, 2008 and was set to switch to a month to month tenancy after 1 or 2 years. Rent was payable in the amount of \$1,200.00 and on October 15, 2008 the Tenants paid \$400.00 as the security deposit. The Tenants failed to pay the balance owing of \$300.00 for the security deposit as noted on the tenancy agreement. No move-in or move-out inspection reports were completed as everything was done verbally.

The Agent advised that early on in the tenancy the Tenants were not able to pay the full \$1,200.00 on the first of each month so they entered into a verbal agreement that the Tenants could pay \$600.00 on the first and \$600.00 on the fifteenth of each month. Throughout the tenancy the Tenants short paid some of the rent which has left an accumulated unpaid balance of \$600.00. The Agent confirmed the Tenants paid rent in cash and no receipts were issued. She did not provide evidence to support when this alleged accumulated unpaid rent accrued.

She advised the Tenants continued to occupy the unit until July 1, 2010 however they failed to pay anything towards June 2010 rent or July 2010 rent. When they went to the rental unit June 30, 2010 to attempt to collect June rent again the male Tenant became very upset and slammed the door closed. The next day a moving truck showed up at the rental unit and the Tenants out. She is seeking \$1,200.00 for unpaid rent for June 1, 2010 and \$1,200.00 for July 1, 2010 loss of rent because they were not given proper notice to end the tenancy and the unit required several repairs and cleaning before it could be rented again.

In addition to the above claims, the Agent stated the Landlord is seeking \$200.00 for carpet and floor cleaning and \$300.00 for general cleaning of the rental unit. She did not provide evidence in support of these amounts claimed.

### Analysis

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord's Agent.

Based on the foregoing, the copy of the tenancy agreement, and on a balance of probabilities, I find as follows:

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

Section 26 of the Act states a tenant must pay rent when it is due under the tenancy agreement. Therefore, I find the Tenants have breached the Act by occupying the unit for the full month of June 2010 without paying their rent which has caused the Landlord to suffer a loss. Based on the aforementioned I find the Landlord has met the burden of proof, for loss, as listed above, and I hereby approve their claim for **\$1,200.00** unpaid rent.

Section 45 of the Act provides that a tenant may end a periodic tenancy by providing the Landlord with notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement. In this case the Tenants continued to occupy the unit until July 1, 2010 and then abandoned the unit without notice causing the Landlord to suffer a loss of one month's rent as he was not able to advertise the unit for rent until after the unit was cleaned. Based on the aforementioned I find the Landlord has met the burden of proof of loss, as listed above, and I hereby approve his claim of **\$1,200.00**.

The Landlord has sought \$600.00 in accumulated unpaid rent. No receipts were every issued and no documentary evidence was provided to support the Landlord's claim. Therefore I find there to be insufficient evidence to support the claim for accumulated unpaid rent and I hereby dismiss the Landlord's claim of \$600.00, without leave to reapply.

The Landlord has sought \$200.00 for carpet and floor cleaning plus \$300.00 for general cleaning of the rental unit. In the absence of receipts or move-in and move-out inspection reports I find there to be insufficient evidence to support the Landlord suffered these losses and the claims for \$200.00 and \$300.00 respectively are hereby dismissed, without leave to reapply.

The Landlord has been partially successful with his application; therefore I award partial recovery of the filing fee in the amount of **\$25.00**.

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

Unpaid Rent for June 2010	\$1,200.00
Loss of Rent for July 2010	1,200.00
Filing fee	25.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$2,425.00</b>
Less Security Deposit of \$400.00 plus interest of \$1.28	- 401.28
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$2,023.72</b>

### Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$2,023.72**. The order must be served on the respondent and is enforceable through the Provincial 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: April 06, 2011.

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Residential Tenancy Branch