



# 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 security deposit, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord's Agent, (from here on in referred to as the Landlord) to each Tenant, were sent via registered mail on December 2, 2010. Mail receipt numbers were provided in the Landlord's verbal testimony. The Landlord testified the female Tenant signed for her package on December 7, 2010 and the male Tenant's package remains unclaimed. The Landlord advised that in their town everyone is assigned one mailbox number for mail delivery and this never changes. Even if someone moves to another location as long as they stay in that town their mail box number stays the same. There is no street delivery of mail in this town. In addition she advised that the Tenants were married during their tenancy and she has since seen them around town together so she knows for certain their service address, which is their mail box, remained the same after the tenancy ended. Based on the aforementioned, I find both Tenants have been sufficiently served notice of today's dispute resolution hearing, in accordance with the Act.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenants despite them being served notice of today's hearing in accordance with the Act.

### Issue(s) to be Decided

1. Did the Tenants breach 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 parties entered into a written fixed term tenancy agreement effective November 1, 2008 which expired January 31, 2009, at which time the Tenants were required to vacate the rental unit. The Tenants remained in the property and continued on as if the tenancy agreement was in full force and effect. Rent was payable on the first of each month in the amount of \$745.00 plus \$10.00 for additional storage. The Tenants were allowed to occupy the rental unit early on October 15, 2008. A security deposit of \$372.50 was paid on October 15, 2008. The move-in inspection report was completed in the presence of the Tenants on October 15, 2008 and the move-out inspection was completed in the absence of the Tenants on November 17, 2010. The Tenants vacated the property, without notice, and left the keys in an envelope in the Landlord's drop box on November 10, 2010.

The Landlord testified that when the Tenants failed to pay the November 1, 2010 rent a 10 Day Notice to End Tenancy was posted to their door on November 3, 2010 for \$745.00 unpaid rent, plus \$10.00 for storage, and a \$25.00 late payment fee as provided in #9 of their tenancy agreement.

The rental unit is a furnished apartment. The owners have owned the unit for approximately 20 years and it has always been a rental unit. The unit was recently converted to a furnished unit. Furnishings were comprised of articles left behind by previous tenants; some used furniture from the Landlord, and various bedding and kitchen utensils which were either new or used from the Landlord or owners.

The Landlord referred to her itemized list of claim and photos which were provided in evidence to support her testimony that it took 9.5 hours to clean the unit and 4 hours to paint all of the cabinets. She is also claiming for specific cleaning and other related charges as listed in her details of claim. She confirmed the cabinets were painted at the onset of the tenancy. No receipts were provided to support when items were replaced or repaired. The amounts claimed are estimates provided by the Landlord as in many cases items were purchased in bulk and are held in a storage area until needed.

### Analysis

I have carefully considered all of the testimony and evidence which included, among other things, photographs, a move-in and move-out inspection report, a copy of the previous tenancy agreement, a copy of the 10 Day Notice, and the cleaning and damage charges created by the Landlord. Based on the foregoing 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 provides a tenant must pay rent when it is due in accordance with the tenancy agreement. Therefore the Tenants breached the Act when they failed to pay November 1, 2010 rent of \$745.00. The evidence supports the Tenants vacated the property in accordance with the effective date of the 10 Day Notice and the tenancy ended on November 13, 2010 pursuant to section 44(1)(a)(ii) of the Act. The Tenants vacated the property without advising the Landlord of their intentions and did not clean the unit which prevented the Landlord from re-renting the unit immediately.

Based on the aforementioned I find the Landlord has met the burden of proof for loss of \$745.00, as listed above, and I hereby approve their claim of **\$322.85** for unpaid rent for the period of November 1 to 13, 2010 plus **\$422.15** for loss of rent for the period of November 14 to 30, 2010, pursuant to section 67 of the Act.

Section 7 of the Regulations states a landlord may charge a nonrefundable late payment fee of \$25.00 as long as the tenancy agreement provides for such a fee. In this case section #9 of the tenancy agreement provides for a \$25.00 late payment fee. Based on the aforementioned I find the Landlord has met the burden of proof, as listed above, and I hereby approve their claim of **\$25.00** late payment fees.

The Landlord has applied for \$10.00 for a storage fee for November 2010. There is no provision in the tenancy agreement for this charge nor is there evidence before me to support the Tenants entered into an agreement to pay \$10.00 per month for storage.

Therefore I find there to be insufficient evidence to support the claim for storage fees and I dismiss the claim of \$10.00, without leave to reapply.

The photographic evidence and move-out inspection report confirm the rental unit was not cleaned at the end of the tenancy. This is a breach of section 37 of the Act which states that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. I accept the Landlord's testimony that it took them approximately 9.5 hours to remove the debris, clean the counters, sinks, wash dirty dishes, sweep, and vacuum floors. Based on the aforementioned I find the Landlord has met the burden of proof, as listed above, and I hereby approve their claim of **\$237.50** for cleaning (9.5 hours x \$25 per hour).

Section 20 of the Act states that a landlord must not require or include as a term of a tenancy agreement, that the landlord automatically deducts or withholds an amount from the security deposit, at the end of the tenancy.

Based on the above, I find the "Addendum to Residential Tenancy Agreement RE: Cleaning Requirements and Costs" which was signed by the parties October 14, 2008, to be a breach of Section 20 of the Act, and is of no force or effect as it states "We/I agree to have the appropriate charges applied against our security deposit / pet deposit at the above quoted rates."

The amounts claimed by the Landlord for "specific cleaning" totaling \$520.00 are therefore of no force and effect as they are in breach of Section 20 of the Act. That being said, I find there to be sufficient evidence to support the items listed in this section (stove, fridge, cupboards, floors, bathroom, curtains, carpets, windows, light fixtures, and patio) did require cleaning. In the absence of time sheets of when this specific work was actually performed I hereby award the Landlord a nominal amount of **\$350.00** for specific cleaning which is comprised of 14 hours x \$25.00 per hour.

The evidence supports the inside of the cabinets were freshly painted at the onset of the tenancy and were not kept or maintained in a manner that would provide for the normal useful life of 4 years of interior paint. This is a breach of section 32(2) of the Act. The Landlord has claimed an amount of \$80.00 (depreciated by 50% of the actual cost) to paint the interior of the cabinets, and drawers in the kitchen and bathroom. Based on the aforementioned I find the Landlord has provided sufficient evidence to meet the burden of proof and I hereby approve their claim of **\$80.00** for painting.

The remainder of the Landlord's claim is \$373.98 which is comprised of items missing or damaged from the written inventory and costs to dispose of debris. There is no

evidence provided to support the original cost of these items, the testimony confirms some of these items were left behind by previous tenants and therefore have no value to the Landlord, nor are there receipts to support the date and actual cost of items purchased or disposed of. Based on the aforementioned I find there to be insufficient evidence to support the Landlord's claim for damage or loss, as listed above, and I hereby dismiss the remainder of the Landlord's claim of \$373.98, without leave to reapply.

The Landlord has been partially successful with their 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 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 November 1 – 13, 2010	\$322.85
Loss of rent November 14 – 30, 2010	422.15
Late payment fee for November 2010	25.00
9.5 hours general cleaning of rental unit	237.50
Specific cleaning (14 hours)	350.00
Painting interiors of cupboards and drawers	80.00
Filing fee	25.00
Subtotal (Monetary Order in favor of the Landlord)	<b>\$1,462.50</b>
Less Security Deposit of \$372.50 plus interest of \$1.19	- 373.69
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$1,088.81</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 **\$1,088.81**. This Order must be served on the respondent Tenants and is enforceable through the Provincial Court 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 07, 2011.

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Residential Tenancy Branch

