



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MND MNR

### Preliminary Issues

The Landlords filed their first application for dispute resolution on December 7, 2010 and the hearing documents were sent for the Landlords to pick up and serve upon the Tenants. The Landlords did not conduct the service of the first hearing documents within three days, as required by the Act. The Landlords filed their application a second time on January 5, 2011 so that they could conduct service in accordance with the Act.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for damage to the unit site or property and for unpaid rent or utilities.

Service of the hearing documents, by the Landlord to each Tenant, were sent via registered mail on January 7, 2011 to the forwarding address provided by the Male Tenant. The Landlords testified that they had knowledge that the two Tenants began their tenancy as a couple and at the end the Male Tenant moved out after they broke up. The registered mail package addressed to the Female Tenant was returned to the Landlords while the one addressed to the Male Tenant was not. Mail receipt numbers were provided in the Landlords' evidence. Based on the aforementioned I find the Male Tenant is deemed to be served the hearing documents on January 12, 2011, the fifth day after they were mailed as per section 90(a) of the Act. The Female Tenant has not been served notice of this hearing in accordance with the Act.

The Landlords appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Did the Tenants breach the *Residential Tenancy Act*, regulation or tenancy agreement?

2. If so, have the Landlords met the burden of proof to obtain a Monetary Order as a result of that breach?

### Background and Evidence

The Landlords testified the parties entered into a written month to month tenancy agreement effective April 1, 2010. Rent was payable on the first of each month in the amount of \$1,350.00 and on April 1, 2010 the Tenants paid \$500.00 as the security deposit.

The rental unit is a ½ duplex which was built in 1991. The Landlords have owned the unit since approximately 2004 and completed renovations during that first year which included new flooring, lighting fixtures, cabinets, bathroom, paint and trim. The Landlords occupied the unit until 2008 after which they began to rent it out. The interior doors were original from 1991. The carpet in the basement and stairs was replaced in late 2009 after damage caused by a previous tenant.

The property was up for sale prior to this tenancy and the Tenants were working with the realtor for showings. The realtor had reported that they had seen excessive damage to the property so when rent remained unpaid the Landlords decided to issue an eviction notice. The Tenants failed to pay the July 2010 rent in full and after two payments there was still an outstanding balance due of \$700.00. No rent was paid for August 2010 and when the Landlords attended the unit to serve an eviction notice on September 3, 2010 they found that the Male Tenant was moving out that day. The Female Tenant remained in the unit until September 12<sup>th</sup> or 13<sup>th</sup>, 2010.

The Landlords decided to move back into the unit and began to move their possession in as of September 15, 2010. They are seeking compensation for the following:

1. Unpaid rent of \$700.00 for July 2010 and \$1,350.00 for August 2010.
2. \$425.00 for 5 interior doors @\$85.00 each. There were 4 doors in total that were damaged as supported by their testimony and photographs. They advised that one was ripped off of the door frame, one was excessively damaged by dog scratching, one had a hole punched into it, and the bathroom pocket door had been ripped right off which took the track off of the door frame.
3. \$120.00 for two bi-fold closet doors which were ripped off of the master bedroom closet. The Landlords testified that given the condition of the pin the doors could not have fallen off and could not be re-used.
4. \$1,350.00 to paint the two basement rooms and the hallway for a total of approximately 450 Square feet. This is to repair the damage caused by the

Tenant's German Sheppard dog which appeared to them to have been left unattended in the basement, as supported by their photographs.

5. \$3,254.00 to replace the carpet in the basement and up the stairs which is comprised of \$630.00 underlay, \$1,435.00 carpet, \$1,189.00 installation. The carpet had to be removed as soon as the Landlords moved into the unit as the Tenants' dog had urinated all over the carpet and scratched and chewed the carpet until it frayed, which is displayed in their photos.
6. \$100.00 to purchase and install the fir trim required to replace the damaged trim around the door in the basement. They advised they provided photos to support the trim had been damaged by the dog scratching which needs to be replaced.

The Landlords confirmed that none of the damaged items have been repaired or replaced as of yet as they are awaiting compensation so they can afford to complete the repairs. The amounts claimed are based on estimates they acquired from a local store for similarly priced items.

### Analysis

The Landlords did not serve the Tenants with notice of their first application, in accordance with the Act; therefore I hereby dismiss the Landlords' first application for dispute resolution which was filed on December 7, 2010, with leave to reapply. The Landlords took that leave and reapplied on January 5, 2011. Following is my analysis on the second application that was filed January 5, 2011.

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlords have applied for a monetary Order which requires that the Landlords serve **each** respondent as set out under *Residential Tenancy Rules of Procedures and Section 89 of the Act*.

The evidence supports both registered mail packages were sent to the Male Tenant's forwarding address which is not the Female Tenant's forwarding address. Therefore, only one of the two Tenants has been served with the Notice of Dispute Resolution documents in accordance with section 89 of the Act. Based on the aforementioned, I find that the request for a monetary Order against both Tenants must be amended to include only the Male Tenant who has been properly served with Notice of this Proceeding. As the female Tenant has not been properly served the Application for Dispute Resolution as required, the monetary claim against the Female Tenant is dismissed without leave to reapply.

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 that a tenant must pay rent when it is due in accordance with the tenancy agreement. The evidence supports the Tenants owed rent of \$700.00 for July 2010 and \$1,350.00 for August 2010. Therefore I find the Landlords have met the burden of proof for loss, as listed above, and I hereby approve their claim in the amount of **\$2,050.00**.

Section 32 (3) of the *Act* states that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item.

The evidence which included photographs, the move in inspection report, and the Landlords testimony confirms the interior doors, bi fold doors, paint, walls, carpet and trim, were in good condition at the onset of the tenancy and were damaged, for some items beyond repair, during the course of the tenancy.

*Residential Tenancy Policy Guideline #16* states that a Dispute Resolution Officer may award "nominal damages" which are a minimal award. These damages may be awarded where there has been insufficient evidence to support the actual cost of the

loss, but they are an affirmation that there has been an infraction of a legal right. In this case, after consideration of the useful life of the items being claimed, I find that the Landlord is entitled to nominal damages as follows:

Although the interior doors have surpassed their usual life of 15 years they were in good condition at the onset of the tenancy and suffered damage beyond normal wear and tear. Therefore I award a nominal amount of **\$200.00** for damage caused to the 4 interior doors (4 x \$50.00).

The bi-fold closet doors are also original and surpassed their usual life of 15 years. They also suffered damage beyond normal wear and tear. Therefore I award a nominal amount of **\$50.00** for damage caused to the 2 bi-fold doors (2 x \$25.00).

The basement was last painted in 2004 and has therefore surpassed its useful life of four years. That being said, the damage to the walls was beyond wear and tear; therefore I award a nominal amount of **\$75.00** to repair, sand, and for preparation of the walls for painting.

The carpet and underlay were replaced late into 2009 and were within their normal useful life. They were both ruined by the dog urinating, scratching and chewing them. Therefore I award the Tenants the nominal amount of **\$2,500.00** for the removal, purchase cost and installation of the underlay and carpet.

The door trim was made of fir and would have surpassed its useful life if it had been original however the trim in the house was replaced in 2004 leaving approximately 14 more years of useful life. Therefore I award the nominal amount of **\$35.00** for the fir door trim.

**Monetary Order** – I find that the Landlords are 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 July 2010 (\$700.00) and August 2010 (\$1,350.00)	\$2,050.00
Damage to 4 Interior Doors	200.00
Damage to 2 bi-fold Doors	50.00
Damage to walls	75.00
Damage to carpet and underlay	2,500.00
Damage to door trim	35.00
Subtotal (Monetary Order in favor of the Landlords)	<b>\$4,910.00</b>
Less Security Deposit of \$500.00 plus interest of \$0.00	- 500.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$4,410.00</b>

Conclusion

A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$4,410.00**. The Order must be served on the respondent Male Tenant 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 18, 2011.

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Residential Tenancy Branch