



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

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

### **Introduction**

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to retain all or part of the security deposit or pet damage deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The landlord company was represented at the hearing by an agent who gave affirmed testimony and provided evidence in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on December 9, 2010, the tenant did not attend.

All evidence and testimony provided has been reviewed and is considered in this Decision.

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

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to retain all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

### **Background and Evidence**

The landlord's agent testified that this fixed-term tenancy began on September 1, 2010 and was to expire on August 31, 2011, however the tenant vacated the rental unit on November 30, 2010. Rent in the amount of \$820.00 per month was payable in advance on the 1<sup>st</sup> day of each month. On August 13, 2010 the landlord collected a security

deposit from the tenant in the amount of \$410.00. A move-in condition inspection report was completed on August 24, 2010 but a copy was not provided in advance of the hearing.

The landlord's agent further testified that he became the building manager on October 1, 2010 and at that time the tenant had already been a tenant of the landlord. The tenant told the landlord's agent that he was going to his home over-seas and would be vacating the rental unit prior to the end of the fixed term, but did not provide a date that he would be moving. On October 30, 2010 the tenant gave notice in writing to move from the rental unit on November 30, 2010.

On November 29, 2010 the landlord's agent received a letter from the tenant which contained a forwarding address in Canada.

The landlord's agent stated that the tenancy agreement provided for liquidated damages in the amount of \$350.00 for early termination of the fixed term, but did not provide a copy of that agreement. He further stated that the tenant failed to attend the move-out condition inspection on November 30, 2010, but did not provide any evidence of providing a date and time to the tenant to conduct that inspection. The landlord's agent completed the move-out condition inspection without the tenant present, and did not provide a copy of that report.

The landlord claims \$350.00 for liquidated damages, \$220.00 for cleaning the rental unit after the tenant had vacated, \$4.48 for 4 burned out light bulbs, rent for the month of December, 2010, \$11.50 for registered mail and recovery of the \$50.00 filing fee for the cost of this application.

### **Analysis**

In the circumstances, I find that the landlord has failed to establish that the tenant owes liquidated damages in the amount of \$350.00. I have no tenancy agreement to substantiate that claim. I further find that the landlord has failed to establish the claim for unpaid rent for the month of December, 2010. The tenant gave notice to vacate the unit on October 29, 2010 noting that he would be vacating the rental unit on November 30, 2010, and the landlord has not provided sufficient evidence to support the claim that the tenancy was a fixed term to expire in August, 2011.

The *Residential Tenancy Act* and the regulations set out the requirements for a landlord to conduct move-in and move-out condition inspection reports, and place the onus on the landlord to provide the tenant with at least 2 opportunities to complete the inspections unless the tenant has abandoned the rental unit. In this case, I find that on

October 30, 2010 the tenant provided the landlord with notice to vacate the unit effective November 30, 2010 and therefore the rental unit cannot be considered abandoned. Further, I find that the landlord has failed to provide the tenant with 2 opportunities to conduct the move-out condition inspection. The *Act* states that the landlord's right to claim against the security deposit for damages to the unit is extinguished if the landlord fails to complete the move-out condition inspection report in accordance with the regulations. I must therefore find that the landlord's right to claim against the security deposit for damages is extinguished.

With respect to the landlord's claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss;
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

In this case, I find that the landlord has failed to establish any of the elements above. I have no inspection report to prove the condition of the rental unit at the outset of the tenancy or at the end of the tenancy. I further find that the landlord has failed to provide receipts for the burned out light bulbs. I also find that registered mail is not recoverable under the *Residential Tenancy Act*.

### **Conclusion**

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

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 14, 2011.

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Residential Tenancy Branch