



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent, for damage to the unit, site or property and for money owed or compensation for damage or loss under the Residential Tenancy Act, Regulation or tenancy agreement. The landlord also seeks an Order to keep the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on February 28, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on March 05, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for damages to the rental unit, site or property?

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenant's security deposit?

### Background and Evidence

The landlord testifies that this month to month tenancy started on November 01, 2008 and ended on December 31, 2010. Rent for this unit was \$1,350.00 per month and was due on the last day of each month in advance. The tenants paid a security deposit of \$675.00 on November 05, 2008.

The landlord testifies that the tenants gave notice to end their tenancy by e-mail and the landlord states she contacted the tenants and made at least three appointments to view the property but each time the tenants failed to appear. Eventually the landlord states she saw the condition of the house and although she had advertised it for rent it was in such an appalling condition she could not let potential tenants view it. The landlord testifies that the tenants signed an agreement (copy provided) that they would pay rent for January, 2011 and agreed to pay money for materials to repair the damage to the property. The landlord states she agreed if the tenants paid these sums by January 15, 2011 she would not charge them for her husband's labour costs to repair and clean the unit. The female tenant signed this agreement. The landlord testifies it has taken her husband so long to rectify the damage and clean the rental unit that it was not re-rented until April, 2011. The landlord testifies that the tenant's failed to keep to the agreement and did not pay any rent or sums owed for damage and cleaning. The landlord seeks to recover the unpaid rent for January, 2011 due to lack of written Notice and per the written agreement and because of the condition the unit was left in rendering it un-rentable for January, 2011.

The landlord testifies that the tenants have failed to pay their city water bill for the period from October 05, 2010 to January 06, 2011 due on February 01, 2011. This bill is for \$229.30 which also included arrears of \$131.75. (Copy of bill provided).

The landlord testifies that the tenants have caused considerable damage to the rental unit. She states the rental unit was in a good condition at the start of the tenancy with new carpets in place. The landlord has provided copies of the move in condition inspection and photographic evidence to show the condition of the unit before the tenants moved in. The landlord has provided photographic evidence of the condition of the unit at the end of the tenancy and a list written by the female tenant detailing some damages caused during their tenancy. The landlord states the tenants agreed they had caused this damage and told her the male tenants' mother would pay for it. The landlord has provided some e-mail correspondence between herself and the female tenant.

The landlord states as the tenants had given keys to the unit to many of their friends, when her husband was in the unit looking at the damage he noticed that some of the tenants belongings left in the unit were missing. She states her husband changed the locks to the front door to prevent others entering the unit and taking the tenants belongings. The landlord states the tenants still had the garage opener and could enter the unit that way. The landlord has provided e-mails showing they informed the tenants of this and states the tenants knew they could come and get a key from the landlords. The landlord states after the tenants had officially moved out on December 31, 2011 the tenants returned to the unit around the first or second week in January, 2011 and they broke into the house to remove more of their abandoned belongings. The landlord states she called the police at this stage because the tenants no longer had a right to enter the property.

The landlord testifies that the unit was been severely damaged by the tenants and their dog (which was not allowed at the unit according to the tenancy agreement). The landlord details the damage to the unit and testifies four doors were damaged with holes in them; the main door was cracked from top to bottom; two bathroom cabinets and counters were broken and cracked; closet doors were broken or missing, some had cracks, some had holes or broken hinges, some were off their tracks and had missing knobs; the door tracks for the closet doors were damaged; the garbrator was broken; the central vacuum system was left severely blocked; a bedroom light shade was broken; venetian blinds were broken and missing; the main thermostat was broken and had been pushed into the wall; room thermostats were broken; the toilet was left extremely dirty and blocked; there were holes in

the walls; light switches and socket covers were cracked and broken; phone outlet plates were cracked; heat registers were broken; heating cables were damaged and the panel box was destroyed and cables appeared to have been pulled out and cut; a window was broken and the patio door frame was broken; screens were left broken; there were holes left in the roof from the tenants satellite dish, the soffit by the front door was damaged; the house numbers at the front of the house were damaged; there were damaged window tracks on the bathroom window; the garden fence was broken, plus damage to gates and locks; the garden was left in an un-kept condition; garbage had been left in the house and garage; the carpets were so badly stained with unknown substances, dog feces and urine they could not be cleaned and both the carpet and underlay had to be replaced and the floor washed with disinfectant.

The landlord testifies that her husband did much of the work himself to repair and rectify this damage and she seeks to recover \$2,000.00 for his labour; the landlord also seeks to recover \$6,872.67 for the repair materials and carpets (receipts provided but inaccurate figure claimed. It should be \$6,522.51); \$1,000.00 to remove carpets, underlay and disinfect floor; \$1,000.00 to install new carpets and underlay; \$450.00 for the heating contractor to repair the box and wires; \$2,200.00 to repair and re-paint the walls; \$377.97 to replace and install patio door; \$100.00 to remove all the garbage; \$1,350.00 for loss of rental income for January, 2011; \$229.30 for unpaid water bill; \$1,000.00 for the landlords husband lost income as he had to attend the property on separate occasions to keep appointments with the tenants, this also includes his travel costs. The landlord has provided receipts and invoices for each item claimed.

### Analysis

The tenants did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

With regard to the matter of a loss of rental income for January, 2011; A tenant is required to give the landlord one clear months written notice to end the tenancy pursuant to s. 45 of the *Act* and this notice must be received by the landlord on the day before the day that rent is due in order to be effective at the end of the following month. In this case the tenants did not provide written notice to the landlord to end their tenancy. I also find from the evidence provided and the landlords testimony that the tenants left the rental unit in a condition which required considerable time to return the unit to a condition in which it could be re-rented again. Along with this one tenant has also signed an agreement which states she will pay rent for January, 2011.

Consequently, I find the landlord is entitled to recover a loss of rental income to the sum of **\$1,350.00** and I Order the landlord to keep the tenants security deposit of **\$675.00** and accrued interest of **\$1.58** pursuant to section 38(4)(b). This sum will be offset against the loss of rental income.

With regard to the landlords claim for unpaid utilities; I find the tenancy agreement in place states that water is not included in the rent and I find the landlord has established her claim for the unpaid water bill and is therefore entitled to recover the sum of **\$229.30** from the tenants.

With regard to the landlords claim for damages to the unit, site and property; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I have considered the landlords documentary evidence and photographic evidence in this matter. The condition inspection report and photographs shows the unit to be in a good condition at the start of the tenancy. The landlord has provided a list of some of the damages drawn up by the female tenant and has provided photographic evidence of the condition of the unit at the end of the tenancy. This list and the photographs show the damage down to the unit and show the appalling condition the tenants left the unit in at the end of the tenancy.

It is therefore my decision that the landlord has provided sufficient evidence to support her claim in part and she is able to meet all of the components of the above test. I have adjusted the landlords claim as I found some inaccuracies with her figures and calculations. Therefore, I find that the landlords claim for compensation for the cost of repairing damage to the unit is upheld and she is entitled to a Monetary Order to the amount of **\$13,650.48** comprised of \$6,522.51 for materials including carpets and underlay; \$1,000.00 to remove carpets and disinfect flooring; \$1,000.00 to install new carpets and underlay; \$450.00 for the heating contractor ; \$2,200.00 to repair and paint the walls; \$377.97 to replace and install patio door; \$100.00 to remove garbage; \$2,000.00 for the landlords husbands labour costs to carry out the repair work.

However with regard to the landlords claim for \$1,000.00 for her husband's lost time at work and travel costs. When a landlord is an absentee landlord and does not live in the same area as the rental unit, any costs incurred in attending the unit are a cost of doing business as a landlord and a landlord is not entitled to recover these costs from a tenant. Therefore, this section of the landlords claim is dismissed.

As the landlord has been largely successful with her claim she is also entitled to recover the **\$100.00** filing fee from the tenants pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 of the *Act* for the following amount:

Loss of rental income	\$1,350.00
Costs incurred to repair damage	\$13,650.48
<b>Subtotal</b>	<b>\$15,229.78</b>
Less security deposit and accrued interest	(-\$676.58)
Plus filing fee	\$100.00
<b>Total amount due to the landlord</b>	<b>\$14,653.20</b>

### Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$14,653.20**. The order must be served on the respondents 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: June 10, 2011.

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Residential Tenancy Branch