



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

### Dispute Codes:

MND , MNDC, MNR, MNSD, FF

### Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for damage to the unit.

Despite being served on March 8, 2011 by registered mail sent to the forwarding address provided in writing by the tenants, neither of the two co-tenants appeared.

### Issue(s) to be Decided

The landlord was seeking a monetary order for damage to the unit and the issue to be determined based on the testimony and the evidence is whether the landlord is entitled to compensation under section 67 of the *Act* for damages caused by the tenant.

### Background and Evidence

Submitted into evidence was the tenancy agreement, communications between the parties, the move-in and move-out condition inspection reports, invoices, a copy of a Ten Day Notice to End Tenancy for Unpaid Rent dated February 4, 2011 showing rental arrears of \$1,525.00, photographs and a copy of the rental account ledger.

The landlord testified that the tenancy began on March 1, 2010 with rent of \$1,500.00 per month and a security deposit of \$750.00. The landlord testified that during the tenancy the roof leaked and the parties made an arrangement between them in which the tenant's rent for August 2010, September 2010, October 2010, November 2010, December 2010 would be waived, and January 2011 valued at \$9,000.00 and in exchange the tenant would install a new roof. The landlord testified that as of February 1, 2011, the tenant would be required to resume paying the usual rent of \$1,500.00. According to the landlord, the rent abatement was contingent upon a satisfactory roof installation. The landlord testified that at the end of the 6-month period, the landlord discovered that the tenant had not installed a new roof as agreed and had only put up some sheets of metal. The landlord stated that the roof has to be redone and the estimated cost is \$10,00.00 plus HST. The evidence indicated that the landlord was claiming compensation for the \$11,200.00 estimated cost to replace the roof. However,

the landlord testified that the compensation being claimed is the \$1,500.00 rent that would have otherwise been due and payable for each of the months of August 2010, September 2010, October 2010, November 2010, December 2010 and January 2011.

The landlord testified that the tenant then failed to pay the \$1,500.00 rent owed for February 2011 and the late fee of \$25.00. The landlord testified that a Ten Day Notice to End Tenancy for Unpaid Rent was issued and the tenant vacated on March 3, 2011. The landlord is claiming \$1,525.00 for February rent.

The landlord testified that the unit was left in an extremely dirty condition with the carpet contaminated by dog droppings. The landlord referenced the move-in and move-out condition inspection reports and pointed out that, although some areas of the rental unit were shown on the form as being dirty when the tenancy started, the unit was left completely unfit to rent when the tenancy ended. The landlord is claiming \$500.00 cleaning costs and provided a receipt indicating that the interior cleaning took 20 hours.

The landlord testified that the carpets were ruined with an estimated replacement cost of \$2,240.00. However, according to the landlord, no replacement has yet occurred and they may not pursue new carpeting as the unit is not going to be rented out.

The landlord testified that \$469.00 was spent on garbage clean-up, including removal of excess metal from the roof work and submitted a receipt showing 6.5 hours at \$47.50 per hour and \$110.00 dump fee, all of which is being claimed.

The landlord testified that \$1,500.00 was incurred for the removal of some kennels that were apparently destroyed by the tenant and this amount is also being claimed.

### **Analysis**

#### **Unpaid Rent for February**

With respect to the payment of rent, section 26 of the Act states that rent must be paid when it is due. I find that the tenant failed to pay the \$1,500.00 rent owed for February 2011 and the late fee of \$25.00. Accordingly, I find that the landlord entitled to be compensated in the amount of \$1,525.00 for rent owed for February.

#### **Cleaning and Repairs**

The landlord was claiming compensation for the cost of cleaning and repairs to the rental property caused by the tenant. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof was on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. Once that has been established, the landlord 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

With respect to the cleaning costs of the unit, I find that the move-in and move-out condition inspection reports confirm that there were already significant existing condition issues when the tenant moved in. I accept the landlord's testimony that the unit was left in a worse condition. However, I find that the tenant should not be held responsible to pay for the entire cleaning job. Accordingly, I find that the parties must share in the cost. I find that the landlord is entitled to be compensated in the amount of \$250.00 for the tenant's portion of the cleaning costs.

With respect to the cost of carpet replacement, I find that the existing carpeting was had likely exceeded its useful life span of 10 years set out in in the Residential Tenancy Guidelines and the landlord is therefore not entitled to be compensated.

With respect to the yard clean-up costs of \$469.00, I find that the move-in condition inspection report shows that the exterior of the property already had maintenance issues when the tenant took occupancy. However, I do accept that the tenant did leave some items strewn about the property that had to be removed. I find that, in order to meet element 4 of the test for damages, the landlord was required to take reasonable steps to minimize the costs and the landlord may have been able to obtain services at a lower cost than hiring a construction firm with an hourly rate of \$47.50. Accordingly, I find that the landlord is entitled to be reimbursed \$195.00 for labour costs at \$30.00 per hour, \$110.00 for the cost of the dumping fees, plus \$36.60 HST, for a total of \$341.60.

With respect to the landlord's claim for \$1,500.00 for the removal of the kennels, I find that there was not sufficient proof to support the allegation that the tenant had caused damage requiring that the kennels be removed and the claim therefore failed to satisfy

element 2 of the test for damages.. Accordingly, I find that this portion of the landlord's application must be dismissed.

### Rent and Roofing Claim

A portion of the landlord's claim related to rent owed for a 6-month period during which the landlord had permitted the tenant not to pay rent as part of a work-for-rent arrangement entered into by the parties after the tenancy agreement was signed. I find that the issue of rental arrears owed and associated damage claims were impacted by an agreement that is not governed by the Residential Tenancy Act.

Although the written tenancy agreement submitted into evidence did not indicate that the parties had made a formal arrangement for the tenant to earn part of the rent through a "rent-for-work" agreement, the testimony and documents submitted into evidence including communications between the parties during the tenancy, indicated that the tenant's rent would be reduced by the value of work performed, as consented to by the landlord. Evidently, the rent abatement was ultimately contingent upon approval by the landlord of the promised work after its completion. However, the landlord was not satisfied with the job done and wants the rent that would otherwise have been paid to be awarded in damages because of the tenant's default on their reroofing agreement.

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [*determining disputes*].

Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) rights and obligations under the terms of a tenancy agreement that:

- (i) are required or prohibited under this Act, or:
- (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities. (my emphasis)

In this instance, I find that the dispute about the tenant's work performance with regard to the roofing job, did not relate exclusively to the tenant's use, occupation of the unit or a tenant's obligation under section 32 for care and maintenance of the rental unit.

In order to meet element 2 of the test for damages, the landlord must prove that there was a violation of the Act or the tenancy agreement by the tenant. Under normal circumstances, the tenant's failure to pay rent would clearly be a violation under section

26 of the Act and the terms of the tenancy. Section 7 would then permit damages that stemmed from this violation to be claimed. However, in this instance, I find that the tenant was authorized by the landlord not to pay the rent when it was due for the months of August, September, October, November, December and January. Because the payment of rent was specifically waived by the landlord, I find that the tenant did not contravene the Act or the agreement by not paying this rent.

The fact that the tenant may have been guilty of violating the mutual agreement for the roofing job by failing to produce the promised product, or quality of work, pertains to a dispute that falls outside my jurisdiction to determine under the Residential Tenancy Act.

Even if such a “work-for-rent” term was clearly defined within the tenancy agreement, which it was not in this situation, I find that section 6(3)(a) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with the Act or the regulations and section 5 of the Act states that landlords and tenants may not avoid or contract out of the Act or the regulations and that any attempt to do so is of no effect.

In the matter before me, I find that assessing relative values of work performed by the tenant as applied to reduction of rent owed to the landlord, clearly falls beyond my authority under the Act and therefore this portion of the landlord’s claim must be dismissed.

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to total compensation in the amount of \$2,216.60 , comprised of \$1,525.00 for rent owed for February 2011, \$250.00 for the tenant’s portion of the cleaning costs, \$341.60 reimbursement for hauling costs and the \$100.00 cost of the application.

I order that the landlord retain the tenant’s \$750.00 security deposit in partial satisfaction of the claim, leaving \$1,466.60 still outstanding.

### **Conclusion**

I hereby grant the Landlord an order under section 67 for \$1,466.60. This order must be served on the Respondent and is final and binding. If necessary it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court Based on the testimony and evidence I hereby dismiss the landlord’s claim in its entirety without leave to reapply.

The remainder of the landlord’s application is dismissed 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: July 20, 2011.

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Residential Tenancy Branch