



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNR, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for an order of possession, a monetary order for unpaid rent and for money owed or compensation for damage or loss and to recover the filing fee.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

As a preliminary issue, the landlord stated he was no longer seeking an order of possession as the tenant had vacated the rental unit. As a result, I amend the landlord's application to exclude the matters related to an order of possession and deal only with the monetary claim.

### Issue(s) to be Decided

Has the tenant breached the Residential Tenancy Act (the "Act") or tenancy agreement, entitling the landlord to an order for monetary relief and to recover the filing fee?

### Background and Evidence

I heard testimony that this month to month tenancy started on July 1, 2007, a written month to month tenancy agreement was signed on August 28, 2009, monthly rent was \$1,600.00 and the tenant paid a security deposit of \$800.00 on or about June 7, 2007. The tenancy ended at the end of April.

The landlord's monetary claim is in the amount of \$6,408.00, which includes unpaid rent of \$1,600.00 for April, loss of rental income due to insufficient notice for May and June for \$3,200.00, an unpaid strata fine of \$200.00, oil clean up of \$130.00, damage to walls for \$783.00, carpet cleaning for \$215.00 and carpet burn repair for \$300.00.

The landlord's relevant evidence included a copy of the returned, NSF rent cheque for April, notice of a strata fine, receipts for repair of damages, a ledger sheet, and photos of the rental unit.

**The landlord's relevant testimony included the following:**

The first time he knew there was a problem with the tenancy came after the April rent cheque was returned due to non sufficient funds, after which he phoned the tenant. The tenant informed him he was moving out at the end of April as he could no longer pay rent. The landlord never received rent for April.

Although the tenant moved out, the landlord did not receive notice and as a result, he lost rent for the month of May and June, 2011.

The tenant left damages to the rental unit, which required the landlord to repair before he could take steps to re-rent the unit. The tenant left a burn in the carpet, damage to the granite countertop, damage to the light fixture clips, and dents in the refrigerator door panel. Additionally the tenant smoked in the rental unit, in violation of the tenancy agreement, which left smoke damage to the walls, requiring the rental unit to be repainted.

After the rental unit was repaired and repainted, the landlord marketed the rental unit, the advertisements for which began on May 30, 2011.

There was no move in or move out condition inspection report as the rental unit was new at the start of the tenancy.

During the tenancy, the landlord paid a strata fine of \$200.00 for the tenant's unauthorized use of a parking space and incurred costs of \$130.00 for an oil stain clean up.

**The tenant's relevant testimony included:**

The tenant agreed that the rental unit was new at move in, that April rent was not paid and that the carpet was damaged, but there were no cigarette burns as he smoked outside.

The tenant lived in the rental unit four years, so therefore the carpets would need to be replaced and the walls would need repainting anyway. Additionally, the nail holes were from a television wall bracket and approved by the landlord.

The tenant did not damage the granite bar and that it just slipped on its own as he never placed any items on the bar. The clips to the light fixture were faulty to begin with and that light bulbs kept going out.

Parking was included in the rent, so the tenant should not have to pay for parking, and the oil stain clean up was paid for in cash by the tenant, with no receipt being issued by the landlord.

The landlord was given verbal notice on February 28 that the tenant was moving out and that the rental unit was advertised and shown while he the tenant, still lived there.

The refrigerator door had dents when the tenant moved in.

**The landlord's response included:**

As the 2 month notice on February 28 was verbal, there was no confirmation that the tenant would move out; there were no showings while the tenant lived in the rental unit and there were no dents in the refrigerator when the tenant moved in.

**Analysis**

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Awards for compensation are provided under sections 7 and 67 of the Residential Tenancy Act (the "Act"). In order to be successful in obtaining an award for damage or loss, it is not enough to allege a violation of the Act, regulations or tenancy agreement by the other party. Rather, the applicant/landlord must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Section 45 (2) of the Residential Tenancy Act states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Under section 52 of the Act, the notice, among other things, must be in writing.

I have no evidence that the tenant submitted his notice to vacate in writing. I therefore find that the tenant failed to comply with the Act and submitted insufficient notice to end the tenancy and is liable to the landlord for rent for May 2011 in the amount of **\$1,600.00.**

I also find that the tenant failed to pay rent for April 2011, when his rent cheque was returned NSF and the landlord has established a claim for **\$1,600.00** for unpaid rent for April.

As to the landlord's claim for loss of rental income for June, I find the Landlord submitted insufficient evidence that he mitigated his loss by advertising the rental unit as soon as possible or at all. I therefore **dismiss** his claim of \$1,600.00 for loss of rent for June.

As to the carpet cleaning, I find that the landlord has established that the tenant did not clean the carpet, as was his responsibility, and that he incurred the cost of cleaning. I therefore find that he has established a monetary claim of **\$215.60**, as shown by his receipt.

As to the carpet burn repair, I find the landlord has not incurred a cost for this request as of the time of the hearing, which is step 3 of his burden of proof, and I therefore **dismiss** his claim for \$300.00.

As to the strata fine of \$200.00 for a visitor parking space violation, the tenancy agreement requires the tenant to comply with strata bylaws. I find the tenant violated the strata parking bylaw and caused the landlord to suffer a loss. I therefore find the landlord has established a monetary claim for **\$200.00**.

As to the oil clean up, I find the landlord's submission of an unsigned invoice to be insufficient and inconclusive evidence to establish a loss. I therefore **dismiss** his claim for \$130.00.

As to the refrigerator door damage, wall damage and necessity to repaint, Section 23(3) of the Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy.

Section 35 of the Act, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection.

In the absence of a move in or move out condition inspection report or proof that the tenant was offered at least 2 opportunities for the inspection, I find the landlord has not sufficiently proven the condition of the rental unit before the tenancy began or after it ended and thereby is unable to meet steps 1 and 2 of his burden of proof. Additionally I am not convinced the entire rental unit needed painting as well as the landlord submitted no evidence that he has suffered a loss as of the day of the hearing. I therefore **dismiss** the landlord's claim for damage to the refrigerator and walls and for painting.

As the landlord was partially successful with his application, I find that he is entitled to recover a partial filing fee of \$50.00.

I find the landlord has established a **monetary claim** in the amount of **\$3,665.60**, comprised of lost or unpaid rent for April and May, 2011, in the amount of \$3,200.00, \$200.00 for a strata parking fine, \$215.60 for carpet cleaning, and \$50.00 for the filing fee.

I **order** that the landlord retain the security deposit and interest of **\$818.28** in partial satisfaction of the claim and I **grant** the landlord an order under section 67 for the balance due of **\$2,847.32**.

I am enclosing a monetary order for **\$2,847.32** with the landlord's Decision. This order is a **legally binding, final order**, and may be filed in the Provincial Court (Small Claims) should the tenant fail to comply with this monetary order.

### Conclusion

The Landlord is granted a monetary order in the amount of **\$2,847.32**.

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 11, 2011.

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Residential Tenancy Branch