



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlords: MND, MNR, MNDC, MNSD, FF  
Tenants: MNDC, MNSD, FF

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution. Both parties were seeking monetary orders.

The hearing was conducted via teleconference and was attended by both landlords and both tenants.

At the outset of the hearing I confirmed with the landlords that their claim included seeking compensation for cleaning in the amount of \$100.00. While there was no error in the calculations or the amount noted on the Application, it was not clear from the written description in the landlord's Application.

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

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent; for compensation for damages and cleaning; for monies owed; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition it must be decided whether the tenants are entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

### **Background and Evidence**

The tenancy began in August 1 2009 as a 1 year fixed term tenancy that converted to a month to month tenancy on August 1, 2010 for a monthly rent at the end of the tenancy of \$1,300.00 due on 1<sup>st</sup> of each month with a security deposit of \$650.00 paid on July 22, 2009.

The parties agree that on February 25, 2011 tenant LN provided the landlord with written notice of her intent to end the tenancy effective April 1, 2011. In the same note tenant LN indicates that she is not certain what tenant KH is planning to do. The landlords did not contact tenant KH to ask what her plans were.

The parties also agree that on March 8, 2011 tenant KH provided the landlord with her notice that she intended to vacate the rental unit on April 1, 2011. The tenant testified that she had obtained an agreement with the landlords that should they not be able to rent the unit for April 2011 she would pay the landlords rent for the month of April 2011.

The male landlord testified that they had not entered into any such agreement. The tenant stated that they had done so by email, neither party provided any emails into evidence regarding any such agreements.

The landlords submitted a copy of a move out Condition Inspection Report dated March 31, 2011. The document is signed by both the male landlord and tenant LN on the move in signature blocks and by the female landlord and tenant KH on the move out signature block.

However tenant KH denies signing the document at the move out inspection and states that was signed on the move in inspection as is shown by the line through the words "on Move-Out". The tenant does agree that she wrote her forwarding address on this document on the day they completed the move out inspection. The landlords insist the tenant signed the move out inspection report on March 31, 2011.

The landlords also seek compensation for a move out fee of \$100.00 charged by the landlords' strata. The landlords submit that the tenants told them they would not pay this fee because they didn't have to pay a fee when they moved in so they don't have to pay one when they move out.

The landlords provided a copy of the strata rules as of June 2010 that state: "Move In/Outs are subject to a \$100.00 charge for each move either in or out. The Owner must give the Strata Council 48 hours notice so elevator pads can be put up. Owners who bought their suite from the Developer are exempt from this Rule for the first move only."

The tenants assert that other tenants in the building haven't had to pay for the move out fee but rather their landlords did. The tenants also assert that the owners must pay the fee because "owners who bought their suite from the Developer are exempt from this Rule."

From the Condition Inspection Report and the landlord's testimony the rental unit required additional cleaning, as evidenced from the move out Condition Inspection Report that cost the landlords \$100.00, as per the receipt submitted and an additional \$43.68 for carpet cleaning to remove the dog urine odour.

The tenants testified that the rental unit was cleaned at the end of the tenancy, except for the balcony because they never used it and despite the landlords' claim that the tenants' dog used the balcony as a location to defecate. The tenants state that the

material the landlord thought was dog feces, was in fact debris from fires in the area prior to the start of the tenancy in 2009.

### Analysis

Section 45 of the *Act* allows a tenant to end a tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice.

Residential Tenancy Policy Guideline 13 defines co-tenants as two or more tenants who rent the same property under the same tenancy agreement. The guideline goes on to say that if one tenant moves out and has given notice to end the tenancy in accordance with Section 45 the tenancy will end on the effective date of that notice, even when the notice is not signed by all the tenants.

However, in the notice provided by tenant LN, she implied that tenant KH may or may not wish to continue the tenancy. I accept the landlords' position that it is not incumbent upon the landlord to seek out and determine if tenant KH was planning to continue the tenancy.

In her testimony, tenant KH stated that she offered that if the landlord was unable to rent the rental unit to new tenants for the month of April, 2011 that she would pay the rent for that month. As such, I find the tenant accepted responsibility for the issuance of a late notice to end the tenancy and its subsequent obligation for the payment of rent for the month of April, 2011.

As the landlords were able to mitigate lost revenue by having the unit rented out by April 15, 2011, I accept the landlord took all reasonable steps to minimize this loss and I find the landlord is entitled to compensation in the amount of \$650.00 for lost revenue.

Section 7 (1)(f) of the Residential Tenancy Regulation allows a landlord to charge tenants a move-in or move-out fee charged by a strata corporation to the landlord. I accept the tenants were informed of the fee prior to moving out and that they have provided no evidence or relevant argument as to why they should not be responsible for this fee. I find the landlord is entitled to payment for this fee.

As to the landlords' request for compensation for cleaning and carpet cleaning, I accept the move out Condition Inspection Report as an accurate reflection of the condition of the rental unit. I base this partly on the tenant's testimony that they didn't clean the balcony for the duration of the tenancy and partly because I find it unlikely that the tenant would have completed a move out inspection with the landlord; written her forwarding address on the Report; and not read through the Report or sign it.

As such, I accept the landlords' receipts for cleaning and carpet cleaning to establish the value of the cost incurred by the landlords for cleaning and for ridding the rental unit

of the urine smell in one of the bedrooms. I find the landlord is entitled to the claim of \$143.68 for these costs.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end date of the tenancy and receipt of the tenants' forwarding address in writing, either return the security deposit to the tenants or file an Application for Dispute Resolution.

Section 38(6) states that should a landlord fail to comply with Section 38(1) the landlord must pay the tenants double the amount of the security deposit.

From both tenants, in their notices to end the tenancy list April 1, 2011 as the effective date of the end of the tenancy and as I have found that tenant KH accepted responsibility for the tenancy for the month of April 2011, at least until the unit was re-rented to new tenants, I find the tenancy ended on April 14, 2011.

As such the landlords had until April 29, 2011 to submit their Application for Dispute Resolution. The landlords' Application for Dispute Resolution is date stamped as received by the Residential Tenancy Branch on April 18, 2011 and therefore well within the legislated requirements outlined in Section 38(1).

### Conclusion

For the reasons note above, I dismiss the tenants' Application in its entirety.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$943.68** comprised of \$650.00 compensation for lost revenue; \$100.00 move out fees; \$143.68 cleaning and carpet cleaning; and the \$50.00 fee for this application.

I order the landlord may deduct the security deposit held in the amount of \$650.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$293.68**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced 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: August 12, 2011.

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Residential Tenancy Branch