

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The male landlord (the landlord) testified that he sent a copy of his dispute resolution hearing package to the tenants by registered mail on August 29, 2011. The landlords entered into written evidence a copy of the Canada Post Tracking Numbers and Customer Receipt regarding these mailings. The landlords also entered into written evidence a copy of the Canada Post tracking information that confirmed that the female tenant signed for receipt of the dispute resolution hearing package on September 13, 2011. The tenants confirmed that they received this package by registered mail two weeks before this hearing.

The landlord said that he sent his written evidence to the tenants by registered mail on September 19, 2011. He said that his check of Canada Post records indicated that a first notice was sent to the tenants by Canada Post on September 22, 2011 and a second notice was sent by Canada Post on September 27, 2011. The female tenant confirmed that the tenants have not had time to pick up the landlords' registered mail because their work hours do not enable her to pick up registered mail at the local post office outlet.

I am satisfied that the landlords served their dispute resolution hearing package and their written evidence package in accordance with the *Act*.

### Issues(s) to be Decided

Should the tenants be granted an adjournment? Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy? Is the landlord entitled to retain

all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

### Tenants' Adjournment Request

At the commencement of the hearing, the male tenant (the tenant) requested an adjournment to enable the tenants to fully consider the landlords' application for dispute resolution and to prepare and present their own written evidence. He testified that the key that the tenants were given to their new mailbox did not work and they were unable to access it to obtain their mail until Canada Post issued them a new key two weeks prior to the hearing. He said that he had called the Residential Tenancy Branch (RTB) to request an adjournment. He said that he was told that he could make his request at the hearing and that he should attempt to obtain written confirmation of the problem with his mailbox key from Canada Post and forward this to the RTB. The tenant said that thus far he has been unable to obtain written confirmation of this problem from Canada Post .

At the hearing, I asked the landlords if they had any objections to granting the tenants their requested adjournment. The landlord strongly objected to adjourning this matter as he is seeking a monetary claim that will assist him in conducting and completing the repairs necessary arising out of this tenancy. He said that further delay will cause additional financial hardship in restoring the rental property to its previous condition. He said that the landlords have been trying to obtain the tenants' co-operation for a number of months and further delays will only add to the financial burden the landlords are encountering as a result of the tenants' actions. He noted that the landlords have taken careful measures to ensure that they have complied with the service provisions regarding their dispute resolution hearing package and their written evidence.

### Analysis- Adjournment Request

Rule 6 of the RTB's Rules of Procedure (the Rules of Procedure) establishes how late requests for a rescheduling and adjournment of dispute resolution proceedings are handled. Since the tenants did not make any written submission requesting an adjournment before this hearing and were both in attendance at the hearing, the following portion of Rule 6.3 applies:

*6.3 At any time after the dispute resolution proceeding commences, the Dispute Resolution Officer may adjourn the dispute resolution proceeding to a later time at the request of any part or on the Dispute Resolution Officer's own initiative.*

In considering this request for an adjournment, I have applied the criteria established in Rule 6.4 of the Rules of Procedure. Of particular note for my consideration of the

tenants' request for an adjournment in this case are the following sections of Rule 6.4 which read in part as follows:

**6.4 Criteria for granting an adjournment**

*Without restricting the authority of the Dispute Resolution Office to consider other factors, the Dispute Resolution Officer must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:*

- a) the oral or written submissions of the parties;...*
- c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;*
- d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*
- e) the possible prejudice to each party.*

Pursuant to section 90(a) of the *Act*, the landlords' dispute resolution hearing packages notifying the tenants of the September 30, 2011 hearing was deemed to have been received on September 3, 2011, the fifth day after they were mailed. There is undisputed oral and written evidence that the tenants received the landlords' dispute resolution hearing package on September 13, 2011, 17 days before this hearing. By that point, the tenants clearly understood that the landlords were seeking a monetary award of \$9,000.00. By that date, I also understand that any difficulties that the tenants had been having with respect to accessing their key to their new Canada Post mailbox had also been resolved.

I am satisfied by the landlords' oral and written evidence that the landlords sent their written evidence package by Canada Post's registered mail service on September 19, 2011. According to section 90(a) of the *Act*, this written evidence was deemed to have been received on September 25, 2011.

I find that the tenants did not act responsibly in neglecting to obtain the landlords' written evidence sent by registered mail on September 19, 2011. The female tenant testified that she was aware that there was registered mail at the local postal outlet that she did not pick up before this hearing. The female tenant explained that the tenants' work hours conflicted with the hours when the local postal outlet was open and this prevented them from obtaining the landlords' written evidence package. I am not satisfied that this explanation justifies the tenants' request for an adjournment of this hearing to enable them to obtain the landlords' written evidence package or to provide

their own written evidence in response to the landlords' evidence. Information was provided to the tenants as part of the landlords' dispute resolution hearing package outlining how evidence was to be exchanged between the parties prior to this hearing. The tenants knew by September 13, 2011 that the landlords had commenced an application for dispute resolution that was to be heard on September 30, 2011. They chose to attach little priority to ensuring that they were in possession of the landlords' written evidence package.

I find that the tenants neglected to pick up registered mail sent to them by the landlords prior to this hearing. This neglect and the tenants' failure to provide any written evidence before this hearing indicate to me that the tenants have not taken proper measures to ensure that they were informed of the landlords' evidence nor did they prepare for this hearing by providing their own written evidence. It appeared to me that the tenants had an opportunity prior to the hearing to present any written evidence they had in order to oppose the landlords' application. At the hearing, the male tenant said that he needed more time to prepare his evidence. However, he gave no description of what evidence he would be submitting if an adjournment were granted. Based on the oral and written evidence submitted by the landlord, I accepted that the landlords would be unfairly prejudiced if I were to allow the tenants more time to submit written evidence that they could have but did not provide before this scheduled hearing.

At the hearing, I decided that the tenants had not met the criteria established for granting an adjournment. To grant their request for an adjournment at the hearing would be to condone their lack of attention to ensure that they received the landlords' evidence and were prepared to address that evidence at this hearing. Consequently, I advised the parties that I was denying the tenants' request for an adjournment. I proceeded with this hearing.

### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, e-mails and reports, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around each are set out below.

The tenants first occupied the rental unit including grounds surrounding this natural log structure by way of a one year fixed term tenancy agreement that commenced on November 1, 2007. A series of one year agreements were subsequently signed by the parties, the most recent of which was a one-year fixed term tenancy agreement that took effect on January 1, 2010. After the expiration of this term, the tenancy converted to a periodic tenancy. Monthly rent was set at \$1,400.00, payable on the first of each

month. The landlords continue to hold the tenants' \$700.00 security deposit and \$300.00 pet damage deposit paid on October 15, 2007.

The parties agreed that the female tenant and the female landlord conducted a joint move-in condition inspection on October 15, 2007. This signed document identifying 30 items on a handwritten foolscap page was entered into written evidence by the landlords. The landlords also entered into written evidence a copy of the move-out condition inspection report of the landlords' inspection of the rental property on a standard RTB Condition Inspection Report form. They testified that they provided a copy of this report to the tenants in their written evidence package of September 17, 2011. The landlords' written evidence package also included a summary of their claim, a chronology, copies of various documents and agreements, and 72 photographs, including photographs of two requests to conduct joint move-out condition inspections posted on the tenants' door. The tenants did not provide any written evidence.

This tenancy ended in August 2011, after the landlords apparently issued a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on or about July 27, 2011. The tenants testified that they surrendered vacant possession of the rental unit to the landlords on August 2, 2011. The landlord testified that the tenants continued to access the rental home to retrieve possessions until August 17, 2011. The landlord said that the tenants refused to participate in a joint move-out condition inspection, did not leave the keys with the landlords and did not leave a written forwarding address where they could be contacted.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the onus is on the landlords to prove on the balance of probabilities that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

### Analysis – Unpaid Rent and Loss of Rent

Based on the undisputed evidence of the parties, I am satisfied that the tenants did not pay rent for August 2011. As such, I issue a monetary award in the landlords' favour in the amount of \$1,400.00 for unpaid rent for August 2011.

I am also satisfied on a balance of probabilities that the tenants did not provide written notice before August 1, 2011 that they were planning to end their tenancy before September 30, 2011. Their failure to pay rent for August 2011 and the uncertainty surrounding when and if they would leave the rental unit in compliance with the landlords' 10 Day Notice made it difficult for the landlords to commence attempts to re-rent the premises to another tenant for September 2011. Based on the oral and written evidence of the parties, I find that the tenants did not leave this rental unit in condition such that it could be rented as of September 1, 2011. Based on these determinations, I allow the landlords' application for a monetary award for loss of income for one half of September 2011. As such, I issue a monetary award in the landlords' favour in the amount of \$700.00 for the landlords' loss of rent for one half of September 2011.

#### Analysis – Landlords' Application for Damage and Losses Arising out of this Tenancy

Based on the landlords' written, oral and photographic evidence, I find that damage and loss did arise out of this tenancy for which the landlord is entitled to a monetary award.

I am satisfied that the landlords did give the tenants two written opportunities to participate in a joint move-out inspection of the rental premises at the end of this tenancy. The tenants' apparent insistence that any inspection be conducted in the format that they preferred does not negate the fact that the landlords did comply with the *Act* in notifying the tenants of the proposed dates for this inspection.

I have compared the joint move-in condition inspection report with the move-out condition inspection report completed by the landlords at the end of this tenancy and forwarded to the tenants by the landlords in mid-September 2011. Since the style of the two reports are quite different, it is difficult to compare each and every item listed on the two reports. However, I am generally satisfied that there was more damage to the rental unit following this tenancy than would normally be expected over this length of tenancy arising out of reasonable wear and tear. In coming to this decision, I found the detailed records, reports and photographs provided by the landlords were far more compelling than the male tenant's oral statement at the hearing that there was no damage to the house during the tenancy except for wear and tear.

As noted above, separate from whether damage arose from this tenancy, the landlords also have to demonstrate their actual losses arising out of this tenancy in order to obtain a monetary award for damage. While the landlords have submitted some invoices and

receipts, much of the landlords' application for a monetary award for damage reduces to the landlords' somewhat subjective estimate as to the costs that they will incur in restoring the premises to their former condition. The landlord admitted that they have not undertaken a good portion of the work claimed in their application for a monetary award. He said that the landlords were hoping to be able to conduct more extensive repairs once they receive funds from the tenants to enable the landlords to embark on these repairs.

I am sympathetic to the landlords' unwillingness to commit to retaining tradespeople to restore the property to its previous state without obtaining a clear signal as to whether these repair costs would be underwritten by the monetary award that the landlords are seeking from the tenants. As noted above, this approach taken by the landlords is at odds with the burden placed on the party making an application for recovery of losses and for damage arising out of a tenancy.

Many of the landlords' requests for monetary awards were based on the male landlord's estimate for what it would cost to replace items damaged or the "value" of goods destroyed, damaged or removed from the rental property. For example, the landlord applied for a monetary award of \$1,000.00 for the tenants' cutting of four Douglas Fir trees on the rental property. The male tenant said that two of these trees were damaged and had to be felled, so his removal of the trees should also be factored into consideration.

The landlord also testified that the Douglas Fir trees were used by the tenant to build a tree fort which the landlords also maintained had to be removed from the property in order to rent to another tenant. He estimated the cost of the clean up and trucking of this tree fort off-site to be \$400.00. The landlords also claimed \$200.00 for a chicken coop that the tenants built over a former sandbox the landlords had built when their children were young. The landlords also claimed for reimbursement of \$50.00 for a used lawnmower and \$100.00 for a used rototiller, both of which were not protected by the elements and left to rust. The landlord also claimed \$150.00 for a pressure washer which the tenants allegedly removed from the rental property when they vacated the rental unit. A claim for reimbursement for used equipment that may have been scheduled for replacement is unavailable to a claimant without receipts.

The landlords have provided some receipts for general cleaning supplies, carpet cleaning and lock replacements (the latter of which the landlords would normally be responsible for replacing at the end of a tenancy). However, for the most part, much of the work that was required to clean up the premises has been conducted by either the landlords or a cleaning person they hired to perform these duties. The landlords did not

provide receipts or estimates for much of the damage that they maintained arose out of this tenancy and which remains in the same condition as when the tenants vacated the rental unit.

Under these circumstances, I allow the landlords' application for a monetary award for \$125.00 in carpet cleaning on August 30, 2011. I also allow a monetary award in the landlords' favour in the amount of \$217.76 for assorted items such as missing lightbulbs, caulking, cleaning supplies, smoke alarms, and various miscellaneous items, where the landlords did enter into written evidence copies of receipts.

Based on the undisputed oral and written evidence provided by the landlords, I accept that the landlords are entitled to recover a number of deductions in rent that the landlords allowed over the course of this tenancy. I accept the landlords' undisputed testimony that this work was either not done, not done to an acceptable level or deductions were made without the tenants' provision of requested receipts. For these reasons, I allow a monetary award in the landlords' favour for \$420.00 for deductions made in December 2010, May 2011 and July 2011.

I also allow the landlords a monetary award of \$600.00 that they paid SW to clean the premises after the end of this tenancy. In addition, I allow the landlords reimbursement of \$450.00 for their own labour in cleaning the premises, removing debris and conducting minor repairs to the premises, at a rate of \$15.00 hour.

I dismiss the remainder of the landlords' application for reimbursement, as the landlords have not submitted sufficient evidence that they have actually sustained losses for which they can claim compensation.

I allow the landlords to retain the tenants' security and pet damage deposits plus interest to partially offset the monetary award issued in this decision.

### Conclusion

I issue a monetary award in the landlords' favour in the following terms which allows the landlords to recover unpaid rent and losses arising out of this tenancy and to retain the tenants' security and pet damage deposits.

Item	Amount
Unpaid August 2011 Rent	\$1,400.00



Loss of Rent for One Half of September 2011	700.00
Carpet Cleaning	125.00
Miscellaneous Items and Supplies	217.76
Deductions for Rent Reductions that were not Substantiated	420.00
Hired Cleaning Costs	600.00
Cleaning, Removal of Debris and Minor Repairs Conducted by Landlords or Landlords' Family	450.00
Less Security and Pet Damage Deposits (\$700.00 + \$300.00 = \$1,000.00 + \$18.25)	-1,018.25
<b>Total Monetary Order</b>	<b>\$2,894.51</b>

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.