



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      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, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order pursuant to section 67 of the Act, as a result of that breach?

### Background and Evidence

The Tenant affirmed that he had received copies of the Landlord's application for dispute resolution and their evidence.

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement that began on September 1, 2010 and was scheduled to end on August 31, 2011. This was the second one year term the Tenant had entered into for this rental property. Rent was payable on the first of each month in the amount of \$1,950.00 and on August 10, 2009 the Tenant paid \$950.00 for the security deposit. On February 28, 2011 the Tenant provided the Landlord with written notice to end the tenancy as of March 31, 2011 and vacated the property on that date. A move in inspection report was completed September 1, 2009 and the move out inspection report was completed March 31, 2011.

The Landlord affirmed the Tenant had signed the move out inspection report acknowledging that he was breaking the lease and would be responsible to pay for the following: 1) rent until the unit was re-rented; and 2) the \$460.00 balance owing for March 2011 rent; and 3) carpet cleaning of \$276.20; and 4) liquidated damages \$500.00; and 5) grass cutting of \$60.00. The Landlord could not provide testimony as to when the move out inspection report had "Rent for April 1950 & May 1950" [sic] written on it.

The Landlord advised they advertised the rental unit immediately on their website and two local internet sites. They ended up dropping the rent to \$1,850.00 to attract new renters. The new tenants signed a fixed term tenancy on May 18, 2011 for the lower rent of \$1,850.00 and paid prorated rent for May 2011 in the amount of \$754.80. The Landlord is seeking \$3,445.20 loss of rent comprised of \$1950.00 for April 2011, \$1195.20 for May 2011, \$100.00 June 2011, \$100.00 July 2011, \$100.00 August 2011.

The Landlord referred to her evidence which included, among other things, a copy of the move in and move out inspection form, the Tenant's notice to end tenancy, and a copy of the invoice for carpet cleaning. She did not have an invoice for the grass cutting and requested to withdraw the claim for \$60.00.

The Tenant stated he had agreed to pay the \$460.00 in unpaid rent for March 2011, the \$276.20 for carpet cleaning, and the \$500.00 liquidated damages fee for breaking the lease. He advised that he wished to dispute the Landlord's claim for loss of rent because they had to break the lease because the Landlord ignored their requests to have repairs completed to the rental property. He stated that he could not provide testimony as to why they chose to break the lease instead of seeking assistance with the *Residential Tenancy Branch* to have the repairs completed.

In closing the Landlord stated that she disagreed with the Tenant's explanation for breaking the lease because he had told her they had been accepted into a housing co-op and that was why they broke the lease. Furthermore, the Tenant had initially requested a month to month tenancy which the Landlord had the owner to agree to but that the Tenant changed his mind and requested a one year lease. The Tenant disagreed with the Landlord's closing remarks.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on a balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement.

Section 45 (2) of the Act provides that a tenant may end a fixed term 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 not earlier than the date specified in the tenancy agreement as the end of the tenancy, and (c) 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. In this case the Tenant could not end his fixed term tenancy in accordance with the Act prior to August 31, 2011.

As per the aforementioned, I find that by not paying March 1, 2011 rent in full and by ending his tenancy March 31, 2011, the Tenant has breached the *Residential Tenancy Act* and his tenancy agreement. I accept the Landlord mitigated their loss by reducing the rent in order to re-rent the property as soon as possible. The evidence supports the Landlord suffered a loss of rent of \$3,445.20 as a result of that breach which is comprised of \$1950.00 for April 2011, \$1195.20 for May 2011, \$100.00 June 2011, \$100.00 July 2011, \$100.00 August 2011. Therefore, I approve the Landlord's claim of loss of rent in the amount of **\$3,445.20**.

The Tenant agreed he was responsible to pay the Landlord \$1,236.20 comprised of the unpaid rent of \$460.00 for March 2011, and the \$500.00 liquidated damages fee as provided in item 26 on the tenancy agreement, and the carpet cleaning costs of \$276.20. Therefore I approve the Landlord's claim for losses of **\$1,236.20**.

The Landlord has been successful with their application, therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Loss of Rent	\$3,445.20
Unpaid Rent, Liquidated Damages, Carpet cleaning	1,236.20
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$4,731.40</b>
<b>LESS:</b> Security Deposit \$950.00 + Interest 0.00	<u>-950.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$3,781.40</u></b>

### Conclusion

The Landlord's decision will be accompanied by a Monetary Order in the amount of **\$3,781.40**. This Order is legally binding and must be served upon the Tenant.

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: September 19, 2011.

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Residential Tenancy Branch