



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNDC, MNR, MNSD, O, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security and pet deposits. Both parties were represented in the conference call hearing.

At the hearing, the landlord's agent withdrew the claim for damage to a cooktop and the cost of rekeying locks. The hearing proceeded to address the remaining claims.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background, Evidence and Analysis

The parties agreed that the tenancy began in 2009 and ended on April 30, 2011. They further agreed that the tenants were obligated to pay \$3,500.00 per month in rent in and that they paid a total of \$2,700.00 in security and pet deposits. Although the landlord was awarded the security and pet deposits at an earlier hearing, the parties agreed that the tenants had completely satisfied the landlord's award arising from that hearing and that as a result, the landlord still held the security and pet deposits. I address the landlord's claims and my findings around each as follows.

- [1] **Floor damage.** The landlord seeks to recover \$300.00 as the cost of repairing damage to a floor in the rental unit. The landlord testified that the floor in the lower powder room had water stains which were not there at the beginning of the tenancy. The landlord based the amount of the claim on a verbal estimate provided by a maintenance person. The tenant argued that there was a persistent water leak down exterior walls and theorized there had been water ingress into the bathroom, causing the water stains. The landlord's agent explained that the stains were located against an inside wall and therefore could not have been caused by water ingress. The tenant argued that absent photographs or an invoice, he could not properly respond to the landlord's claim. The landlord bears the burden of

proving the claim. In order to establish the claim, it must be proven that any damage goes beyond what may be characterized as reasonable wear and tear. In the absence of photographs or professional opinion, I am unable to find that the damaged alleged is unreasonable and accordingly I dismiss the claim.

[2] **April unpaid rent.** The parties agreed the tenants had not paid rent for the month of April although they occupied the rental unit during that month. I award the landlord \$3,500.00.

[3] **Cost to re-rent.** The landlord seeks to recover \$1,575.58 as the cost of re-renting the rental unit. The tenancy agreement provides as follows:

If the tenant vacates prior to the expiration of Lease the tenant will be responsible for any costs incurred by the Landlord to re rent the premise. This will include but not limited to loss of rent up to the expiration of the lease, fees paid to management agencies, credit checks and advertising. The landlord has a duty to mitigate loss by acting in a prompt manner to re rent the premise.

The landlord was represented at the hearing by the property management company which invoiced management fees related to advertising and re-renting the unit. The tenant argued that the landlord had started advertising the unit prior to the time the tenants gave their notice and questioned the costs charged on the invoice. There was no dispute that the tenants were bound by a fixed term expiring on June 30, 2011. The landlord's agent explained that they began advertising the rental unit on their website after the tenants had failed to pay rent earlier in the year and in anticipation that there would be an eventual default as the tenant had not paid rent regularly. The tenant disputed that the landlord had needed to "chase" him for rent. I find that the tenants chose to enter into a fixed term tenancy and that they chose to agree to pay management fees and advertising costs in the event of a default. The amount claimed by the landlord is approximately 45% of the rent payable for the unit and I do not find that sum to be unreasonable. The fact that the landlord began advertising the unit well in advance of the time the tenants gave their notice benefitted the tenants as there was no period in which the unit was unoccupied and the landlord did not need to claim against the tenants for loss of income. I award the landlord \$1,575.58.

[4] **Drywall repair.** The parties agreed that the tenants should be responsible for \$150.00 in repair costs to drywall. I award the landlord \$150.00.

- [5] **Unpaid utilities.** The landlord seeks to recover \$624.57 in unpaid utilities. The rental unit is in a home in which there is a separate, significantly smaller suite in the basement occupied by the owner. The tenancy agreement provides that the tenant is responsible to pay 75% of the hydro and natural gas costs. The tenant argued that when his tenancy began, it was understood that the owner was a single woman living alone but that during the tenancy, the landlord installed a kitchen and hot water heater and entertained many guests who would stay for extended periods of time. The tenant alleged that at times, the number of people in the owner's suite exceeded the 4 people living in the rental unit. He argued that the agreement was unfair. The landlord's agent acknowledged that a kitchen and hot water heater had been installed in the home and that the owner had other people living with her at various times but argued that in 2010, the tenant agreed to an extension of the fixed term and not only made no attempt to negotiate a lower percentage of responsibility for utilities, but made no mention of the issue to the landlord. The tenant argued that it was the landlord's obligation to ask the tenant if he felt everything was fair.

Section 6(3)(b) of the Act provides that a term of a tenancy agreement is not enforceable if it is unconscionable. Section 3 of the Regulation defines unconscionable as a term which is "oppressive or grossly unfair to one party." I can accept that some unfairness may have existed in this arrangement, but I am unable to find that this unfairness is extreme or oppressive. I agree with the landlord that the tenant had ample opportunity to dispute the percentage of his responsibility during the tenancy and failed to do so, even when the new fixed term was entered into. I do not agree that it was the responsibility of the landlord to ask the tenant if he felt the arrangement was fair as it would stand to reason that the landlord would assume the agreement was fair because the tenant had never raised it as an issue. I find that the term is not unconscionable and that the tenant must be bound by it. I find that the landlord should recover the unpaid utilities and I award the landlord \$624.57.

- [6] **Carpet replacement.** The landlord seeks to recover \$827.82 as the cost of replacing the carpet in the rental unit. The landlord's agent testified that there were large stains on the carpet at the end of the tenancy which could not be removed. The landlord's agent estimated the age of the carpet at 12 years as this is the age of the house and he believed that the carpet was original to the house. Again, in order to establish the claim, it must be proven that any damage to the carpet goes beyond what may be characterized as reasonable wear and tear. In the absence of photographs or professional opinion, I am unable to find that the damaged

alleged is unreasonable and further, I find that the carpet had likely outlived its useful life. I dismiss the claim.

- [7] **Carpet cleaning.** The landlord seeks to recover \$100.80 as the cost of cleaning the carpet in the rental unit. The tenant argued that he had cleaned the carpet at the end of the tenancy and therefore should not be responsible for the cost of professional cleaning. The tenancy agreement provides that the tenants are responsible to have carpets professionally cleaned at their own expense at the end of the tenancy. I find that the tenants did not have the carpets professionally cleaned and therefore are liable for this expense. I award the landlord \$100.80.
- [8] **Filing fee.** The landlord seeks to recover the \$100.00 filing fee paid to bring this application. The landlord has been substantially successful and I find it appropriate to award the \$100.00 filing fee.

The landlord's agent acknowledged that they successfully re-rented the unit for \$300.00 more per month and have credited the tenants with the additional \$600.00 the landlord received for May and June, the balance of the fixed term.

### Conclusion

In summary, the landlord has been successful in the following claims:

April unpaid rent	\$3,500.00
Cost to re-rent	\$1,575.58
Drywall repair	\$ 150.00
Utilities	\$ 624.57
Carpet cleaning	\$ 100.80
Filing fee	\$ 100.00
<b>Total:</b>	<b>\$6,050.95</b>

The landlord has established a claim for \$6,050.95. I order that the landlord retain the \$2,700.00 pet and security deposits in partial satisfaction of the claim, I apply the \$600.00 credit as described above and I grant the landlord an order under section 67 for the balance of \$2,750.95. This order may be filed in the Small Claims Court and 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: October 07, 2011

---

Residential Tenancy Branch