



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was originally convened on October 20, 2011 but as a result of some service of evidence issues I adjourned the hearing to this date. Both hearings were conducted via teleconference and were attended by the landlord and both tenants.

At the outset of the hearing on November 15, 2011 both parties confirmed that they had received each other's evidence and the hearing proceeded on that basis.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for monies owed or compensation for damage or loss and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenants submitted a copy of a tenancy agreement signed by both parties on July 3, 2008 for a 24 ½ month fixed term tenancy beginning on July 14, 2008 that converted to a month to month tenancy on August 1, 2010 for a monthly rent of \$1,750.00 due on the 1<sup>st</sup> of each month.

A security deposit of \$875.00 was paid on July 4, 2008. The tenancy ended on January 31, 2011 and matters relating to the dispensation of the security deposit have been dealt with in a previous hearing.

The parties agree the tenants painted the rental unit during the tenancy. The tenants acknowledge they do not have any written agreement from the landlord that they could paint the unit but that the landlord had verbally agreed to allow the tenant to paint. The tenants assert that even if they did not have the landlord's permission the landlord did not state at any time that the tenants must paint any of the rooms differently during or at the end of the tenancy.

The landlord testified that he never approved any painting in the rental unit. He acknowledges that he did see the painted rooms in question shortly after the tenants had painted and that he told them then that he didn't like it and it had to be painted again. The landlord also testified that he told the tenants, verbally, just prior to the end of the tenancy that they would need to paint everything they had painted.

The landlord seeks compensation for painting in the amount of \$548.80, invoice submitted into evidence. The landlord also seeks \$735.02 compensation for the payment of plumbing bill received by the landlord for a service call requested by the tenants, invoice submitted into evidence.

The landlord testified that the tenants had complained about a smell, the tenants attributed to the sewer system that he had his own plumbers investigate on each of 4 visits (between March 2009 and February 2010) to the rental unit and that the plumbers by verbal report, each time, indicated they could not smell anything.

Despite this the tenants continued to indicate there was a smell and in August 2010 the female tenant noticed a smell that she was concerned may have been a gas leak. She called the local gas company and a technician found there was no gas leak but suggested that it was a plumbing leak.

There is no mention in any of the documentary evidence about the gas technician's assessment or of any correspondence from the tenants to the landlord regarding the assessment.

The tenants testified that within a few days they contacted a plumber of their own choice who came determined what the problem was and repaired it. The tenants provided a copy of an email from the female tenant to the landlord dated August 11, 2010 telling the landlord that she "had to call a plumber this afternoon since the smell got really bad and I was able to get someone in right away."

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such agreements cannot be enforced. However when the parties disagree with what was agreed-upon, the

verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

In the absence of any consensus on this issue the burden is on the party claiming there was an agreement to establish there was. I find the tenants have failed to establish any agreement had been formed with regard to painting any rooms in the rental unit.

Residential Tenancy Policy Guideline #1 stipulates that any changes to a rental unit not explicitly consented to by the landlord must be returned to the original condition. If the tenant does not return the rental unit to its original condition before vacating, the landlord may return it to its original condition and claim the costs against the tenants.

I find the tenants are responsible for providing the landlord with compensation to return the rooms to the original condition in regard to painting in the amount of \$548.80 as established by the landlord's submission of his painting invoice.

Section 33 of the *Act* allows a tenant to make emergency repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property and are made for the purpose of repairing damaged or blocked water or sewer pipes or plumbing fixtures.

Section 33(3) states that tenant may have the repairs made only when all of the following conditions are met:

1. Emergency repairs are needed;
2. The tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
3. Following those attempts, the tenant has given the landlord reasonable time to make the repairs.

In the case before me, despite the issue of the sewer smell being raised by the tenants over the course of the tenancy, I find the landlord had taken reasonable steps to investigate the problem yet failed to rectify the problem as the plumbers and the landlord never were exposed to the smell the tenant's complained about.

I also find that after the tenants had the gas company technician identify that it was likely sewer gas and combined with the female tenant's statement in her email of August 11, 2010, the tenant should have contacted the landlord to have the landlord contact his plumbers at the time the smell was being so offensive.

By contacting a different plumber altogether the tenants disallowed the landlord the opportunity to make the emergency repairs as required at the time and in accordance with Section 33(3). As such, I find the tenants failed to comply with that Section and are responsible for the charges by the plumber they called, without the landlord's knowledge.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,333.82** comprised of \$548.80 painting; \$735.02 plumbing services; and the \$50.00 fee paid by the landlord for this application.

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: November 15, 2011.

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Residential Tenancy Branch