



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing dealt with applications from the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent, utilities and damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that the landlord did not issue any notice to end this tenancy. The parties agreed that on August 12, 2011 the tenants handed the landlord a written notice to end this tenancy by September 1, 2011. I am satisfied that the tenants issued this notice in accordance with the *Act*, although their notice did not reduce their potential liability for September 2011 rent.

The landlord confirmed that he received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on September 6, 2011. The tenants confirmed that they received a copy of the landlord's dispute resolution hearing package by registered mail on September 13, 2011. I am satisfied that the parties served these documents to one another and their written evidence in accordance with the *Act*.

At the hearing, the landlord asked to amend the amount of his requested monetary award to include the tenants' \$115.56 portion of a utility bill that he received after he applied for dispute resolution. This increased the amount of the landlord's requested monetary award from \$511.90 to \$627.46. As the tenants had received a copy of this

bill in the landlord's written evidence package and confirmed that they had not paid this bill, I agreed to revise the landlord's requested monetary award to \$627.46.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and utilities? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Which of the parties are entitled to the tenants' security deposit? Are either of the parties entitled to recover their filing fees for their applications?

### Background and Evidence

This periodic tenancy commenced on September 1, 2008 by way of an oral tenancy agreement. Monthly rent was set at \$995.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$497.50 security deposit paid on or about September 1, 2008. The parties agreed that the landlord did not conduct or request a joint move-in or move-out condition inspection with the tenants. The landlord testified that he did not prepare a report of his own inspection of the rental unit after the tenants left, although he submitted photographs to support his claim that the tenants left bags of garbage and some materials behind after they ended this tenancy.

The tenants testified that they issued their notice to end this tenancy when the landlord advised them that he was listing the property for sale. The tenants applied for a monetary award of \$1,995.00. They said that they applied a return of double their security deposit and an amount equivalent to one month's rent because they had to move due to the landlord's pending sale of the property.

The landlord's revised monetary application for \$627.46 included the following.

| <b>Item</b>   | <b>Amount</b>   |
|---|-----------------|
| Unpaid September 2011 Rent  | \$995.00        |
| Unpaid Utilities June 1, 2011 to August 31, 2011                      | 115.56          |
| Two Visits to Landfill Site to Remove Material Left at End of Tenancy | 14.40           |
| Less Security Deposit   | -497.50         |
| <b>Total Monetary Award Requested</b>                                 | <b>\$627.46</b> |

The landlord also applied to recover his \$50.00 filing fee for his application.

### 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.

### Analysis- Landlord's Claim for a Monetary Award

Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for September 2011, the tenants needed to provide their notice to end this tenancy before August 1, 2011. As their August 12, 2011 notice to end this tenancy did not comply with section 45(1) of the *Act* in order to avoid responsibility for September 2011 rent, I find that the landlord is entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent for September 2011. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. The landlord testified that he made no effort to rent the tenants' rental unit to another tenant once he received their notice to end this tenancy. He confirmed that he sold the property to the current property owner, a transaction that did not take effect until November 3, 2011. Based on this evidence, I find that the landlord did not attempt to discharge his duty under section 7(2) of the *Act* to minimize the tenants' losses. By failing to do so, I find that the landlord is not entitled to a monetary award for unpaid rent for September 2011.

At the hearing, the tenants confirmed that they did not pay the most recent utility bill covering a portion of their tenancy as this bill was not presented to them until it was entered into evidence for this hearing. They did not dispute the landlord's request for a monetary award for \$115.56 of this bill. Based on this undisputed testimony, I find that the landlord is entitled to a monetary award of \$115.56 for unpaid utilities.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes

regarding the condition of rental units at the beginning and end of a tenancy. 36(1) of the *Act* reads in part as follows:

***Consequences for tenant and landlord if report requirements not met***

**36** (2) *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

*(a) does not comply with section 35 (2) [2 opportunities for inspection],*

*(b) having complied with section 35 (2), does not participate on either occasion, or*

*(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...*

As the landlord did not follow the requirements of the *Act* regarding the joint move-in and move-out condition inspections and reports, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is limited. However, section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The tenants did not dispute the landlord's claim that he was entitled to a reimbursement of the \$14.40 in landfill costs he incurred to remove material that remained at the end of this tenancy.

Based on the oral, written and photographic evidence, I find that the tenants did not comply with section 37(2)(a) of the *Act* by leaving the rental unit "reasonably clean" as some cleaning was required by the landlord after the tenants vacated the rental unit. I find that the landlord is entitled to a monetary award of his claimed amount of \$14.40 to reimbursement him for his losses arising out of the tenants' failure to leave the premises reasonably clean at the end of this tenancy.

**Tenants' Application for a Monetary Award**

The tenants requested a return of double their security deposit and a monetary award equivalent to one month's rent for landlord use of the property.

As the parties agreed that the landlord never issued any notice to end this tenancy for landlord use (or any other reason), I find that the tenants are not entitled to a monetary

award pursuant to section 51 of the *Act*. I dismiss this portion of their application without leave to reapply.

Since the landlord applied for dispute resolution within 15 days of the end of this tenancy, the tenants are not entitled to an order under section 38(6) of the *Act*.

Pursuant to section 38 of the *Act*, I find that the tenants are entitled to recover their \$497.50 security deposit plus applicable interest less the amount of the landlord's monetary award in this decision.

As both parties were partially successful in their applications, I find that the parties are responsible for their own filing fees.

### Conclusion

I issue a monetary Order in the tenants' favour in the following terms which allows the tenants to recover their security deposit less the amount of the monetary award issued in the landlord's favour.

| Item  | Amount            |
|---|-------------------|
| Unpaid Utilities June 1, 2011 to August 31, 2011                      | \$115.56          |
| Two Visits to Landfill Site to Remove Material Left at End of Tenancy | 14.40             |
| Less Security Deposit plus Interest<br>(\$497.50 + \$2.49 = \$499.99) | -499.99           |
| <b>Total Monetary Order</b>   | <b>(\$370.03)</b> |

The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord 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*.

Dated: November 16, 2011

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Residential Tenancy Branch