



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

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

The hearing was conducted via teleconference and was attended by the landlord and the tenants

At the outset of the hearing the landlord testified that he had not received evidence from the tenants. The tenants testified that they had sent their evidence to the landlord via registered mail through Staples but could not provide any tracking information.

I reviewed the material submitted by the tenants with the landlord and noted the majority of evidence was duplication of what the landlord had provided with the exception of a typewritten document from the tenants explaining their position on the landlord's claim.

I advised the landlord I would accept the tenant's evidence but that if there was anything that the landlord wanted to have time to prepare for we would re-visit the admission of that piece. The landlord did not identify any issues through the hearing.

The tenants also noted that a letter from a witness was to be included in the evidence. I advised the tenants it was not in my package. The tenants also noted they had photographs but that they had been unable to send them due to technological restrictions.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

Both parties submitted a copy of a tenancy agreement signed by the parties on November 27, 2009 for a month to month tenancy beginning on November 28, 2009 for

a monthly rent of \$1,250.00 due on the 1<sup>st</sup> of each month and a security deposit of \$625.00 was paid.

The landlord testified at the start of the hearing that rent had been increased in the spring of 2011 to \$1,285.00 per month.

The landlord provided into evidence:

- A copy of a typewritten notice signed by all three tenants and dated August 21, 2011 that they would be vacating the rental unit on September 1, 2011;
- A copy of a hand drawn floor plan for each level of the rental unit that is signed by both parties representing the condition of the rental unit at the start of the tenancy completed on November 27, 2009;
- A handwritten list signed by the landlord and the male tenant on August 31, 2011 noting damages to the rental unit and including dollar amounts for each of the items totalling \$1,295.00;
- A typewritten note dated August 31, 2011 signed by two of the tenants authorizing the landlord to retain the security deposit of \$625.00;
- A handwritten list of damages undated and signed only by the landlord listing some additional items damaged and all revised dollar amounts for a total of \$4,122.00; and
- Receipts confirming expenditures as outlined in the following table:

Description	Amount
Tiles used for carpet replacement	\$492.25
Garbage Removal	\$22.00
Bedroom Door	\$131.04
Closet Doors	\$94.06
Window Replacement	\$412.16
Registered Mail	33.73
<b>Total</b>	<b>\$1,185.24</b>

The tenants submitted a written statement that includes the following statements:

- The landlord was notified of the damage to the basement window in April 2011;
- The landlord was notified of the damage to the kitchen screen door that resulted from a major window storm;
- The landlord removed the cutting board;
- The bedroom door was damaged by accident while a child was playing;
- The woodpile was still on the property on November 25, 2011;
- Have received no receipt for carpet replacement or proof there was urine stain on the carpet;

The tenants testified that they gave the landlord such late notice because in their community landlords will not hold rental units and they could not have afforded to pay rent in two locations once they had found the rental unit they wanted.

The tenants stated they wanted to end the tenancy because they felt the landlord did not give them adequate privacy and that one of the tenants had injured her back and the stairs were becoming a problem for her to use the rental unit fully.

The tenants testified that the move inspection was held and only two of the tenants could attend the inspection. The male tenant testified that he had signed the list of damages on August 31, 2011 but that he did not agree with the list; he only signed it because he felt uncomfortable with the landlord and wanted to get out of there quickly.

The tenants testified that despite the fact that they had a child in the unit who was toilet training and pets the carpet had existing stains as noted in the move in inspection drawing and they should not be held responsible for the replacement.

The landlord testified that he only replaced the carpet in the dining room as the rest of the carpet, despite having stains at the start and end of the tenancy had come clean and the dining room had not. The male tenant had signed the damage list acknowledging the tenants were responsible for damage to the carpet.

The tenants acknowledge that the bedroom door was damaged but that it was an accident and during the hearing the tenants testified they did not damage the closet doors in the basement. The male tenant had signed the damage list acknowledging the tenants were responsible for damage to the closet doors.

The tenants testified that the photographs they have show that the wood pile that the landlord is claiming was still there as of November 25, 2011. The landlord testified that the debris was removed at the cost confirmed by the receipt submitted.

The tenants testified that that they had informed the landlord in April 2011 that a dog was cashing a cat in the yard and the cat ran into the window causing the window to break. The tenants provided no evidence to confirm or corroborate this testimony.

### 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.

Section 45 of the *Act*, states a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day in the month that rent is payable under the

tenancy agreement. The *Act* does not provide any exemptions for landlord practices in local communities or for medical reasons.

Based on the date the tenants provided the landlord with their notice (August 21, 2011) and the day in the month that rent is due (1<sup>st</sup> of each month), I find the earliest the tenants could have ended the tenancy would be September 30, 2011. I accept the landlord's testimony that he immediately advertised the rental unit but was unable to rent it until November 2011.

As such, I find the landlord suffered a loss of income that it resulted from a violation of the *Act* and that the landlord took steps to mitigate the loss and the tenants are therefore responsible for the payment of rent for September 2011.

Residential Tenancy Policy Guideline 13 states co-tenants are two or more tenants who rent the same property under the same tenancy agreement and that co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. As such, any one of the tenants can acknowledge and accept responsibility for those damages or debt.

Further, a party claiming an event in a dispute must provide sufficient evidence to prove the event occurred and that it had impact on the dispute. While the male tenant testified that he was uncomfortable with the landlord and only signed the damage list so he could leave, I find the male tenant has failed to provide any evidence confirming this.

For these reasons, I accept the handwritten list signed by the male tenant as the tenants' acknowledgement of their responsibility for the listed damage. As such, I find the tenants are responsible for carpet replacement; bedroom door replacement; and closet door replacement.

However, in relation to the bedroom doors, I find the loss suffered by the landlord was for the replacement of one door only. The tenants are not responsible for the cosmetic choice to replace the other bedroom doors.

I accept that both parties acknowledge the damage to the basement window occurred during the tenancy. As to the responsibility to the cause of the damage, while the tenant's testified that it was caused by a dog chasing a cat, they have provided no evidence to substantiate or corroborate the testimony.

Even if the damage was caused accidentally, the tenants provided no testimony or evidence to suggest why they should not be held responsible for the damage. I find the tenants have failed to provide to establish they should not be held responsible for the repair of damage to the window during the tenancy. As such, I find the landlord is entitled to costs to repair the window as confirmed by his receipt.

In the absence of the tenant's photographic evidence in conjunction with the landlord's landfill receipt submitted and the landlord's testimony, I find the tenants have failed to

substantiate or corroborate the landlord did not have to remove items to the landfill and I find the tenants are responsible for this cost to the landlord.

In relation to the landlord's claim for registered mail cost for this hearing, I find that those are choices the landlord used to prepare for this case and that he could have chosen alternate methods of service, such as personal service. I find the tenants cannot be held responsible for the landlord's choices of service.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,399.15** comprised of \$1,285.00 rent owed; \$492.25 carpet replacement; \$22.00 garbage removal; \$43.68 replacement of 1 bedroom door; \$94.06 closet door replacement; \$412.16 window replacement and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$625.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,774.15**.

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: December 02, 2011.

---

Residential Tenancy Branch