



# 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 pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence, to make submissions and to cross-examine one another. The landlord testified that she sent a copy of the landlord's dispute resolution hearing package by registered mail to the address where she believed the tenants to be residing on November 8, 2011. She provided a copy of the Canada Post Tracking Number to confirm this mailing. The tenants confirmed that they received the landlord's dispute resolution hearing package by registered mail shortly after it was sent by the landlord. I am satisfied that the landlord served this package to the tenants in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

This one-year fixed term tenancy commenced on May 1, 2011. Monthly rent was set at \$1,300.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$650.00 security deposit. Of this amount, \$600.00 was paid in September 2010 when the tenants commenced a tenancy in another rental unit in this property and the remaining \$50.00 was paid on April 27, 2011.

The landlord entered into written evidence a copy of the joint move-in condition inspection report of May 2, 2011. The male tenant (the tenant) said that the landlord's representative gave them this report to fill out themselves as she trusted them to conduct an honest inspection of the premises, based on the way that they had maintained their previous rental unit. Any prejudice that might have occurred as a result of the landlord's failure to participate in this initial inspection would have been to the detriment of the landlord and not the tenants. As such and since both parties signed the move-in condition inspection report, I am satisfied that this constituted a joint move-in condition inspection, whether or not the landlord participated in the physical inspection of the rental unit when this tenancy began.

The landlord also entered into written evidence copies of the landlord's move-out condition inspection report of August 31, 2011, conducted without the tenants' participation. In her application for dispute resolution, the landlord stated that the tenants gave their verbal notice that they would be ending their tenancy "around August 15<sup>th</sup>" but never did give their written notice to end this tenancy. She testified that the tenants abandoned their tenancy without leaving a forwarding address by the end of August 2011, and dropped the keys to their rental unit in the landlord's office mail slot. At the hearing, the tenants did not dispute any of the above oral and written evidence submitted by the landlord regarding the end to their tenancy.

The landlord applied for a monetary award of \$2,359.28, which included the following items:

Item	Amount
Unpaid September 2011 Rent	\$1,300.00
Liquidated Damages	650.00
Carpets	100.80
Drapes	28.48
Cleaning	100.00
Painting	120.00
Repairs	60.00
<b>Total Monetary Award Requested</b>	<b>\$2,359.28</b>

At the hearing, both of the landlord's representatives testified that there was damage and cleaning required at the end of this tenancy and that the landlord had to remove items from the backyard of the rental unit. They said that there was staining and damage to the carpet. However, the landlord's female representative testified that the rental unit was rented to another tenant for the same monthly rent by October 1, 2011, at which time the new tenant advised that she did not need the carpet replaced,

The tenants disputed the landlord's claim for a monetary award beyond the retention of their security deposit as compensation for their early end to this tenancy. The tenant said that they ended their tenancy because they did not believe that the landlord was doing enough to address drug problems and drug dealing on the rental property. He said that they were concerned about the effect that these problems would have on their children.

During the hearing, the tenant reviewed the contents of the move-in condition inspection report and claimed that much of the damage claimed by the landlord in the application for dispute resolution was in effect at the time of the move-in condition inspection report of May 2011. However, when I asked for clarification of his claim that the drapes were missing from the beginning of this tenancy, the tenant reviewed the report more closely and said that he had mistaken the format of the report and had been reading from the landlord's move-out condition inspection conducted after the tenants abandoned their tenancy. He corrected his testimony by confirming that the two reports stated that items were damaged and missing at the end of this tenancy that were noted as such in the May 2011 move-in inspection report. He did testify that the tenants cleaned the premises thoroughly and steam-cleaned the carpets before they left using their own steam cleaner.

### 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.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Although I have given consideration to the tenants' stated reason for ending their tenancy early, I am not satisfied that their concerns enabled them to abandon this fixed term tenancy without providing any written notice to do so without becoming responsible for paying rent for September 2011. I find that the tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the April 31, 2012 date specified in that agreement. As such, the landlord is entitled to compensation for losses 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. Based on the evidence presented, I accept that the landlord did re-rent the premises for October 1, 2011. As such, I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' loss.

I note that section 45(1) of the *Act* requires a tenant to end even 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 order to avoid any responsibility for rent for September 2011, the tenants would have needed to provide their notice to end even a periodic tenancy before August 1, 2011. Section 52 of the *Act* requires that a tenant provide this notice in writing.

I find that the tenant did not comply with the provisions of the *Act* to provide timely notice to end their tenancy and the requirement under section 52 of the *Act* that a notice to end tenancy must be in writing. I find that the landlord is entitled to a monetary award of \$1,300.00 for unpaid rent for September 2011.

Section 1 of this fixed term tenancy agreement establishes that the landlord is entitled to a liquidated damages fee of \$650.00 if the tenants ended their tenancy prior to the scheduled termination date of their agreement. As this tenancy ended early and the tenants signed and initialled this portion of the residential tenancy agreement, I find that the landlord is entitled to a monetary award of \$650.00 for liquidated damages.

Turning to the remainder of the landlord's claim, primarily for damage that arose during this tenancy, I accept that damage occurred that had not been noted in the move-in condition inspection report prepared by the tenants when they commenced this tenancy. The tenant's abandonment of the rental unit allowed the landlord to conduct a move-out condition inspection without the tenants. I find that the tenant's abrupt reversal of his testimony regarding damage and misreading of the condition inspection reports lends little credibility to his claim that the landlord's claim for damage covered items that were in need of repair when they commenced their tenancy.

I find that the original estimates set out in the landlord's September 1, 2011 Security Deposit Refund statement entered into written evidence by the landlord are less reliable than the actual itemized September 15, 2011 invoices for work conducted by the landlord's representatives on this rental unit. Some of these amounts do not match and I see no reason to allow the landlord the higher monetary award incorporated into the landlord's November 4, 2011 application from dispute resolution from the original

estimates as opposed to the actual invoiced figures. For this reason, I find that the landlord is only entitled to damage in the amounts identified in the landlord's invoices dated September 15, 2011 after work had been completed in this rental unit.

I find that the landlord has demonstrated entitlement to a monetary award of \$60.00 to repair closet doors, touch up painting and to replace living room blinds. I find that the landlord has also demonstrated entitlement to a monetary award of \$90.00 for cleaning throughout the rental unit. I dismiss the remainder of the landlord's claim for damage without leave to reapply as the landlord has not demonstrated that any further actual losses were incurred by the landlord arising out of this tenancy. The landlord did not provide any further receipts or invoices, and admitted that the rental premises were rented to a new tenant the following month for the same monthly rental amount without replacing carpets that the landlord claimed had been damaged during this tenancy.

I allow the landlord to retain all of the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. I also allow the landlord to recover the \$50.00 filing fee for this application as the landlord has been successful in this application.

### Conclusion

I issue a monetary award in the landlord's favour in the following terms which allows the landlord to recover unpaid rent and the filing fee for this application, to recover losses and damage arising out of this tenancy, and to retain the tenants' security deposit:

Item	Amount
Unpaid September 2011 Rent	\$1,300.00
Liquidated Damages	650.00
Cleaning	90.00
Repairs	60.00
Less Security Deposit	-650.00
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$1,500.00</b>

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) 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: January 26, 2012

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Residential Tenancy Branch