



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, FF

### Introduction

This hearing was convened by way of conference call in repose to the landlords application for a Monetary Order for unpaid rent and utilities; a Monetary Order for damage to the unit, site or property; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*. The landlord's agent testifies he had originally sent the documents to both tenants however the post office sent them by priority mail instead of registered mail. These documents were delivered and opened and then resealed and returned to sender. The landlord's agent then resent the documents by registered mail. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave sworn testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

This tenancy started on July 01, 2009. This was a fixed term tenancy which was due to expire on June 30, 2010. The tenancy ended on April 30, 2010 after the landlord requested and received an Order of Possession for unpaid rent. Rent for this unit was \$1,200.00 per month due on the first day of each month in advance.

The landlord testifies that a previous hearing was held on June 08, 2010, in which the landlord was successful obtaining an Order of Possession for unpaid rent and a Monetary Order to recover unpaid rent up to the end of April, 2010. The landlord testifies that they made attempts to re-rent the unit but due to the uncertainty of when the tenants would vacate the unit, lost opportunities to show the unit throughout April, 2010 and due to the level of cleaning and repairs required in the unit the unit could not be rented again until July 01, 2010. The landlord seeks to recover the sum of \$2,400.00 from the tenants for a loss of rental income for May and June, 2010.

The landlord testifies that the tenants failed to pay a utility bill during their tenancy. This bill of \$307.75 was put on the landlords City taxes for 2011. The landlord seeks to recover this sum from the tenants and has provided a copy of the letter from the City concerning this matter.

The landlord testifies that he had to make at least six trips to the rental unit to meet with the tenants to discuss repair issues in the rental unit and to do inspections in the rental

unit. The landlord testifies that the first site inspection was made and the tenants failed to attend. The owner was billed for this inspection and the landlord seeks to recover this from the tenants to the sum of \$145.85. This cost includes the landlord's time and travel expenses. The second inspection was arranged at the unit to meet one of the tenant's fathers to discuss the damages and rent arrears. The tenant's father failed to attend this inspection and the landlord billed the owner the sum of \$180.50 for this visit. The third claim is for a failed move out inspection visit. The owner has been charged the sum of \$145.85 as the tenants also failed to attend on this prearranged inspection date. The landlord testifies that these charges would not have been applied if the tenants had been available on the other arranged inspections.

The landlord testifies that the tenants caused damage to the rental unit. This damage has been recorded on the move out condition inspection and one of the tenants (NB) has signed the move out inspection report agreeing that the report fairly represents the condition of the rental unit.

The landlord seeks to recover the sums of:

\$170.24 for a damaged pantry door,

\$11.16 for replacement light bulbs

\$78.41 for supplies to repair a master bedroom door and multiple holes in the living room and bedroom walls

\$175.00 to have the unit cleaned as the tenants had left it in an unsatisfactory condition

\$386.40 for damage to the hinges of a mirror door and the glass replacement in the other mirror door

\$422.60 for labour costs to repair the walls, painting of the walls; painting the bedroom door; hinge installation and hanging of mirror doors.

The landlord also seeks to recover the costs for damage to the flooring which the landlord testifies went beyond normal wear and tear. Areas of the floor were left with gouges and deep scratches. One of the tenants informed the landlord that he would get a quote from his uncle for the flooring repairs however the tenant failed to do so. The

landlord obtained a quote for this work from a flooring company who stated that the gouges were too deep to be sanded and finished and a partial replacement would not match the remainder of the floor due to the age of the flooring and the lot difference of material. It was recommended that the floor was replaced in the living and dining areas. The landlord testifies that the flooring was only two years old at the start of this tenancy. The landlord testifies that they have not yet had the funds to replace the flooring as required and have had to cover the damaged areas with a carpet. The landlord seeks to recover the sum of \$4,621.52.

The landlord testifies that they were fined by the Strata Council because the tenants caused excessive noise in the unit. The Police had been called out to attend the tenants unit and the landlord was advised by the Strata Council to give the tenants an eviction Notice. The landlord seeks to recover the sum of \$200.00 for this fine from the tenants.

The landlord has provided copies of all invoices and quotes connected to his claim, a copy of the inspection reports and correspondence from the tenants regarding the repairs.

The landlord also seeks to recover his \$100.00 filing fee for this application.

### Analysis

The tenants did not appear at the hearing to dispute the landlord's claims, despite having been deemed to be served with a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

With regard to the landlords claim for a loss of rental income for May and June, 2011 of \$2,400.00; I refer the Parties to the Residential Tenancy Policy Guidelines #3 which deals with the issues concerning unpaid rent or loss of income. This states, in part, if the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of

the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the notice to end the tenancy agreement is given to the tenant. The filing of a claim for damages for loss of rent and service of the claim upon the tenant *while the tenant remains in possession of the premises* is sufficient notice. Filing of a claim and service upon the tenant after the tenant has vacated may or may not be found to be sufficient notice, depending on the circumstances. Factors which the Dispute Resolution Officer may consider include, but are not limited to, the length of time since the end of the tenancy, whether or not the tenant's whereabouts was known to the landlord and whether there had been any prejudice to the tenant as a result of the passage of time. The landlord may also put the tenant on notice of the intent to make a claim of that nature by way of a term in the tenancy agreement.

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

I have considered the landlords claim and find that although the landlord did not put the tenants on Notice that the landlord intended to sue the tenants for any loss of rent over the balance of the fixed term while the tenants remained in possession of the rental unit; I find the tenants did not mitigate their loss by ensuring the rental unit was left in a clean condition and all repairs rectified before the end of the tenancy. I also find by the landlords undisputed testimony that the tenants did not comply with the landlords arrangements to show the rental unit to prospective tenants and would not vacate the rental unit as indicated on the 10 Day Notice to End Tenancy. Consequently, I find the tenants would have been aware of these issues and would have been aware that the tenancy agreement still had another two months before the end of the fixed term. Therefore I do not find that the passage of time since the end of the tenancy and the date the landlords filed his claim would prejudice the tenants and I uphold the landlords

application for a Monetary Order to recover a loss of rental income to the sum of **\$2,400.00** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for Utilities; a tenant is responsible to pay for any utilities they have used during their tenancy. The landlord has provided a letter from the City indicating that the tenants failed to pay the sum of **\$307.75** and this charge was applied to the landlords City taxes for 2011. As such I find the landlord is entitled to recover this sum from the tenants and will receive a monetary award for this amount pursuant to s. 67 of the *Act*.

With regards to the landlords claim for damages and cleaning; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I have reviewed the condition inspection reports and find that the tenant signing the report agrees that the report fairly represents the condition of the unit at the start and end of the tenancy. I have reviewed the landlord invoices and quotes for the required work in the unit and have reviewed the photographic evidence provided by the landlord for most of the claimed repairs and cleaning. As a result I am satisfied that the landlord has met the burden of proof with regards to his claim for cleaning and damages as follows and award the landlord the sum of \$170.24 for a damaged pantry door; \$11.16 for replacement light bulbs; \$78.41 for supplies to repair a master bedroom door and multiple holes in the walls; \$175.00 to have the unit cleaned; \$386.40 for damage to the hinges of a mirror door and the glass replacement in the other mirror door; \$422.60 for labour costs to repair the walls plus painting, painting the bedroom door, hinge installation and hanging of mirror doors. The landlord is entitled to a total sum of **\$1,243.81** for this work pursuant to s. 67 of the *Act*.

With regard to the landlords claim, for replacement flooring; the landlord has provided only one quote for this work and one opinion of a flooring company as to the irreparable condition of the floor which would result in the entire floor in the living and dining areas being replaced. I am not satisfied that the landlord has mitigated his loss in this matter and the landlord should have obtained alternative quotes to meet the burden of proof. As a result I will limit the landlords claim for damage to the floor to the sum of **\$2,310.76**. The landlord will receive a monetary award for this sum pursuant to s. 67 of the *Act*.

With regard to the landlords claim to recover the Strata fine from the tenants; the landlord has provided a "K" form signed by the tenants which advises that the tenant must abide by the Strata rules. The Strata Council imposed a fine of **\$200.00** for excessive noise from the tenants and the landlord is therefore entitled to recover this sum from the tenants pursuant to s. 67 of the *Act*.

With regards to the landlords claim of \$180.50, \$145.85 and \$170.24 for trips to the rental unit to inspect the unit; this type of claim is considered to be the cost of doing

business as a landlord as such even if the tenants had failed to attend the meetings as arranged there is no provision under the *Act* for the landlord to make a claim for his time and travel when he is a landlord that lives a distance away from the rental unit.

Consequently this section of the landlords claim is dismissed without leave to reapply.

As the landlord has been partially successful with his claim I find the landlord is entitled to recover his filing fee of **\$100.00** from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Loss of rental income for May and June, 2010	\$2,400.00
Unpaid utilities	\$307.75
Repairs and cleaning	\$1,243.81
Damage to the floor	\$2,310.76
Strata fines	\$200.00
Filing fee	\$100.00
Total amount due to the landlord	\$6,562.32

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$6,562.32**. The order must be served on the respondents and is enforceable through the Provincial Court 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: January 24, 2012.

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Residential Tenancy Branch