



# 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 response to an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application.

The hearing was originally scheduled for November 30, 2011, at which time the hearing was adjourned with the consent of the parties to ensure that all evidence had been exchanged and provided to the Residential Tenancy Branch. The landlord and the tenant, as well as a witness for the landlord attended the conference call hearing. The reconvened hearing was scheduled for January 3, 2012, at which time only the landlord and the witness for the landlord attended. The tenant did not attend, despite being notified by the Residential Tenancy Branch of the date and time of the reconvened hearing.

The landlord provided affirmed oral testimony and evidence in advance of the hearing, all of which, as well as the testimony of the landlord's witness, has been reviewed and is considered in this Decision.

### 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 or utilities?

### Background and Evidence

This month-to-month tenancy began on September 1, 2010 and ended on December 15, 2010. The landlord testified that rent in the amount of \$1,200.00 per month was payable on the 1<sup>st</sup> day of each month, although no written tenancy agreement was prepared. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$350.00. The parties had been friends prior to the tenancy, and the landlord still holds the security deposit.

The landlord testified that the tenant was to pay \$600.00 per month at the beginning of the tenancy because another person was living in the house paid \$600.00 per month, and the tenant had agreed to \$1,200.00. The two tenants did not get along, and the other tenant moved out on October 15, 2010.

When the tenant paid November's rent, the tenant only had \$700.00 and told the landlord that \$1,200.00 per month was too much, so the landlord agreed to reduce the rent to \$1,000.00. The landlord did not receive anything more for November than the \$700.00, and claims \$300.00 in unpaid rent for November, 2011.

The landlord also testified that the tenant did not leave the rental unit reasonably clean, and the landlord claims cleaning costs of 13 hours at \$25.00 per hour, for a total of \$325.00. The landlord also testified that no move-in condition inspection report was completed at the outset of the tenancy, but the landlord conducted a move-out condition inspection report at the end of the tenancy, and the tenant was not present. A copy of the report was provided for this hearing. The landlord also provided a copy of a move-in and move-out condition inspection report for the previous tenant, which is dated August 29, 2010 at move-out.

A hearing had been conducted by a Dispute Resolution Officer on December 15, 2010 under File Number 764249, which dealt with an application by the tenant for an order cancelling a notice to end tenancy and disputing an additional rent increase. The application was dismissed by the Dispute Resolution Officer because the tenant had agreed to end the tenancy. The tenant vacated the rental unit, but did not provide the landlord with a forwarding address in writing, and the landlord learned of the tenant's forwarding address during the November 30, 2011 hearing.

The landlord's claim is \$2,100.00, being \$300.00 for rental arrears for October, 2010, loss of revenue for November, 2010 in the amount of \$1,200.00; cleaning costs in the amount of \$325.00; pressure washing costs at \$105.00; garbage removal for \$25.00 and \$145.00. No receipts were provided.

The landlord's witness testified that the tenant had thrown garbage bags over the balcony of the rental unit. The rental unit was not cleaned prior to the tenant vacating. The witness testified to moving furniture, appliances, and pressure washed the balcony, which is about 25 by 12 or 14 feet in size. The pressure washing took about an hour or an hour and a half. The witness also spent a whole day cleaning and taking 2 loads to the local landfill as well as 1 load to the appliance refuse.

### Analysis

The *Residential Tenancy Act* states that a landlord's right to claim against a security deposit for damages is extinguished if the landlord fails to complete a move-in or a move-out condition inspection report in the presence of the tenant. Further, a landlord is required to provide a tenant with at least two opportunities to conduct the reports. In this case, the landlord completed a move-out condition inspection report without any input from the tenant, and I find that the landlord has failed to comply with the *Act*.

The move-in and move-out condition inspection reports are particularly useful in determining damages caused by a tenant. I find that the reports provided for this hearing are not useful because the tenant did not participate, nor was the tenant provided with opportunities to participate. Further, in order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

In this case, I find that it's impossible to determine the state of the rental unit at the outset of the tenancy in comparison to the state of the rental unit at the end of the tenancy. The landlord provided a copy of the move-in/out condition inspection report for the same rental unit involving the previous tenants to prove the condition of the rental unit at the outset of this tenancy, but that is not sanctioned by the *Act*. Further, the tenant may not agree that the condition at the end of the previous tenancy was the actual condition at the commencement of this tenancy. The *Act* places the onus on the landlord to ensure that the condition inspections are completed and the regulations go into great detail of how that is to be done. I have also reviewed the photographs provided by the landlord, and I agree that the rental unit was not left reasonably clean, however most of the work that appears to have been necessary was to sweep leaves off the floors. With respect to the unclean oven, pressure washing the deck and scratched door, I find that the landlord has failed to establish, since another tenant also resided in the rental unit, that this tenant is responsible; no move-out condition inspection report was completed when the first tenant vacated the rental unit.

The tenant did not provide a forwarding address in writing to the landlord, and the landlord learned of the forwarding address during the hearing on November 30, 2011. Therefore, I find that the tenant is not owed double the amount of the security deposit, but the tenant is entitled to recover the amount claimed.

With respect to unpaid rent, the *Residential Tenancy Act* states that a tenancy agreement exists, whether or not it is put in writing. In this case, there is no written tenancy agreement, however the landlord testified that the tenant agreed rent in the amount of \$1,200.00 and that the existing tenant would pay \$600.00 per month and this tenant would pay the other \$600.00. The landlord cannot, under the *Act*, change the amount of rent payable. Therefore, I find that the rental amount for this tenant is \$600.00 per month, not \$1,200.00 per month. The landlord also testified that the tenant paid \$700.00 for November, 2010 and then the landlord agreed to reduce the rent to \$1,000.00 per month. There is no evidence that the tenant agreed to that. The previous tenant moved out in October, 2010. Whether or not that tenant provided the landlord with notice as required under the *Act* is not clear, but I find that charging one tenant for the rent for 2 tenants is not lawful. The tenant cannot be held to both shares unless the 2 tenants are jointly and severally liable, meaning that they both entered into the same tenancy agreement with the landlord, which is not what happened in this case.

Therefore, I find that the landlord has failed to establish entitlement to any monetary amount from the tenant due to the landlord's failure to comply with the *Residential Tenancy Act*. The landlord currently holds a security deposit from the tenant in the amount of \$350.00 and has not applied to keep it in full or partial satisfaction of the claim, and I find that the tenant is entitled to recovery of that money.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

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 19, 2012.

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Residential Tenancy Branch