



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNR, MNDC, FF

### Introduction

This hearing for dispute resolution under the Residential Tenancy Act (the “Act”) dealt with the landlord’s application, seeking a monetary order for damage to the rental unit, unpaid rent, and money owed or compensation for damage or loss, for authority to retain the tenant’s security deposit, and for recovery of the filing fee.

The landlord and tenant appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### **Preliminary Issue:**

The parties were previously in dispute resolution on the tenant’s application, which resulted in a Decision in favour of the tenant, granting him a monetary order for \$2530.00 for a return of his security deposit and pet damage deposit, doubled.

Additionally in that Decision, the Dispute Resolution Officer (“DRO”) stated that the tenancy agreement stated the tenancy started on July 8, 2010, for a fixed term to end on July 7, 2011, with monthly rent of \$1350.00 payable on the first day of each month.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order and recovery of the filing fee, pursuant to sections 38, 67 and 72?

Background and Evidence

The parties agreed that the tenancy ended on June 30, 2011.

The landlord's monetary claim is as follows:

Short on Notice	\$1350.00
Cleaning invoices	\$640.00
Carpet cleaning & machine	\$56.94
Home store receipt	\$120.46
Home store receipt	\$105.19
Dump fee	\$6.00
Lawn care	\$320.00
Fuel for dump and errands	\$60.00
Missing patio door screen	\$60.00
Post Office fee	\$25.46
Pictures	\$30.00
Photocopies	\$10.00
Filing fee	\$50.00
<b>TOTAL</b>	<b>\$2904.05</b>

The landlord testified that the tenant's girlfriend notified the landlord in writing on June 9, 2011, that the tenant was vacating the rental unit earlier than the end of the fixed term, that being June 30, 2011. The landlord acknowledged that he accepted the tenancy was to be over on June 30, 2011, even though the notice came from the tenant's girlfriend, who was an occupant. The landlord contends the insufficient notice caused him a loss of revenue for July, 2011.

Upon query the landlord stated his girlfriend advertised the rental unit for rent, due to the tenant's notice, but the landlord was unable to supply the dates of the advertisements. Additionally, the landlord did not submit proof of the advertisements.

As to the short rent of \$70.00 for the month of June, 2011, the tenant acknowledged owing this amount.

The landlord submitted that the tenant left the rental unit dirty and in a state which required cleaning and repair, which caused him an additional loss.

Upon query, the landlord confirmed that there was no move-in or move-out condition inspection report, although the landlord pointed to a two page document compiled by the landlord's girlfriend of the condition of the rental unit at the end of the tenancy. The document described the 73 photos entered into evidence by the landlord.

Upon query the landlord confirmed that there were no like pictures of the rental unit at the beginning of the tenancy. Upon further query, the landlord could not supply a specific date on which the pictures were taken.

The landlord is also claiming for expenses related to processing his application, as indicated above.

The tenant, in response, disagreed that he left the rental unit in a state which required the cleaning and repair. The tenant pointed to the pictures, which he contended were unclear and did not prove that he committed the damages.

The tenant submitted that the landlord has not yet paid the monetary order of \$2580.00 issued against him by another DRO on October 17, 2011.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

**First**, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant

obligations in conducting and completing the condition inspections. In the circumstances before me the landlord has failed to meet his obligation under of the Act of conducting and completing the inspections resulting in extinguishment of the landlord's right to the tenants' security deposit. There is also no independent record of the condition of the rental unit at the start and end of the tenancy.

In the absence of any other evidence, such as the condition inspection reports or photographs prior to and after the tenancy, I do not accept the landlord's claim for damages to the rental unit. The landlord has the burden of proof on the balance of probabilities and I find the landlord's insufficient evidence, or rather lack of compelling evidence, does not meet the burden of proof.

I therefore **dismiss without leave to reapply** the landlord's claim for damages and associated costs, including \$640.00 for cleaning, \$56.94 for carpet cleaner, \$225.65 for home store costs, \$6.00 for dump fee, \$320.00 for lawn care, \$60.00 for fuel dump and errands, and \$60.00 for a missing screen patio door.

As to the landlord's claim for a loss of rent revenue for July 2011, I accept that the tenant provided insufficient notice to end the tenancy early, by his failure to give notice in writing at least one clear month before the effective date of the notice to end.

However, I find the landlord failed to submit proof that he advertised the rental unit in order to mitigate his loss.

In the absence of proof by the landlord of advertisements, I find that the landlord submitted insufficient evidence to prove step 4 in the test for damage and loss. With the lack of evidence, I cannot determine that the landlord made reasonable attempts.

I therefore **dismiss** the landlord's claim for loss of revenue for July 2011, in the amount of \$1350.00, without leave to reapply.

In relation to the landlord's claim for post office fee, pictures and photocopies, the *Act* does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee. Therefore, I find that I do not have authority under the *Act* to grant these costs to the landlord.

I therefore **dismiss without leave to reapply** the landlord's claim for post office fee, pictures and photocopies.

As the tenant agreed that his rent payment for June 2011 was short in the amount of \$70.00 as claimed by the landlord, I find the landlord is entitled to a **monetary order** for **\$70.00**. I have included a monetary order in the landlord's Decision in this amount.

I find that the landlord's application lacked substantial merit and I therefore decline to award him recovery of the filing fee.

The landlord was informed during the hearing that the previous monetary order of \$2580.00 issued against him remains in full force and effect.

### Conclusion

The landlord is granted a monetary order in the amount of \$70.00.

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: February 29, 2012.

---

Residential Tenancy Branch