



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, MNSD, 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, his agent and the female tenant.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled; to a monetary order for unpaid rent; 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 37, 38, 44, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on July 12, 2011 for a 13 month fixed term tenancy beginning August 1, 2011 for a monthly rent of \$1,600.00 due on the 1<sup>st</sup> of each month with a security deposit of \$800.00 paid.

The tenants submit that they ended the tenancy by issuing the landlord their notice to end tenancy on October 1, 2011 with an effective vacancy date of November 30, 2011. The tenants acknowledge that they deducted \$400.00 from the October 2011 rental payment and they did not pay the landlord any rent for November 2011.

The tenants submit that they ended the tenancy for the following reasons:

1. A pre-existing bug infestation;
2. Upstairs tenants – causing noise at all hours;
3. Upstairs tenants accessing the tenant's rental unit;
4. Several break-ins;
5. Water tank – broke on three occasions – no hot water for a week on one of those occasions; and
6. Floods – twice – causing damage to the tenant's belongings; drywall; and mould concerns.

Both parties provided copies of email correspondence all dated between November 1, 2011 and November 14, 2011. The tenant testified that these concerns had been raised with the landlord both verbally and by way of text messaging from the male tenant to the landlord. No hardcopies of text messages were submitted into evidence.

The landlord submits that he was unable to re-rent the unit until he entered into a new tenancy agreement on January 11, 2012 with new tenants for a fixed term tenancy that began on February 1, 2012. He also submits that as he had been unsuccessful at renting it at the same rate as the tenancy under dispute and could only rent it for \$100.00 per month less.

The tenant testified that she saw from the landlord's evidence that he didn't start advertising the rental unit until November 8, 2011 after they had already vacated the rental unit.

The landlord submits that the tenants did not fully vacate the rental unit until November 4, 2011 or return the keys to the landlord. The landlord states that spent approximately 5 hours cleaning and shampooing the carpets. The tenant testified that the carpets had not been shampooed prior to the tenancy and that she had to complete that when she moved in.

The landlord also submits the tenants were responsible, under the tenancy agreement, for keeping the lawn mowed and the garden beds and they failed to do so. The tenant testified that part of the reason they could not take care of the lawn was the lawn mower was a manual mower that did not work well in damp conditions.

The landlord seeks compensation from the tenants for servicing the hot tub as the tenancy agreement states the tenants are not to use the hot tub or put any water in it. The landlord submits the tub was half filled with water at the end of the tenancy. The landlord further states the hot tub cover was also missing at the end of the tenancy.

The tenant provided no testimony disputing that the hot tub was used but she did testify that the hot tub cover had been there at least up until the date that they had moved most of their belongings out of the rental unit but that when she came back to ensure the male tenant had removed all their belongings she noted it was not there.

The tenant, in documents indicated that she was aware it had been there and that anyone who helped them move their belongings did not take it. As such the tenant states she is unaware of what could have happened to it.

The landlord seeks the following compensation:

Description	Amount
Rent – Oct. 2011, Nov. 2011, Dec. 2011, & Jan. 2012	\$5,200.00
Difference in rent Feb. 2012 to Aug. 2012	\$700.00
Hot tub cover	\$636.00
Hot tub servicing	\$90.00
Cleaning/Shampooing	\$400.00
Gardening	\$526.00
Garbage can replacement	\$26.29
Photocopies (hearing documents)	\$5.60
<b>Total</b>	<b>\$7,583.89</b>

### 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 fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the landlord receives the notice and is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

Section 45 goes on to say that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant has provided written notice of the failure the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

As there is no evidence before me that the tenant ever submitted a notice to the landlord, in writing, of any breaches of materials of the tenancy agreement, I find the earliest possible date the tenants could end the tenancy would have been August 31, 2012.

As such, I find the landlord has suffered lost revenue as a result of the tenants' early notice to vacate the rental unit in the following amounts:

- November and December 2011 and January 2012 loss of \$1,600.00 per month for a total of \$4,800.00; and
- February 2012 to August 2012 loss of \$100.00 per month for a total of \$700.00.

Despite the tenants' claim that they were without hot water for a period in October, 2011 a tenant has no authority under the *Act* to deduct any amount from the rent without the landlord's written agreement or an order from a Dispute Resolution Officer and as no such agreement was entered into or order provided, I find the landlord remains entitled to the \$400.00 deducted by the tenants for October 2011.

Section 37 of the *Act* requires a tenant when vacating a rental unit to leave it reasonably clean and undamaged except for reasonable wear and tear. From the photographic evidence submitted and based on the duration of the tenancy, I find that it is unreasonable to expect the tenants to pay for carpet cleaning.

Also from the photographic evidence, I find the tenants left the unit in a reasonably clean and undamaged condition, with the exception of the exterior. I find, based on the photographic evidence and the absence of any dispute from the tenant, that the tenants failed to leave the yard in a condition compliant with the requirements of the tenancy agreement. I find the landlord has, as a result, suffered a loss, in the amount supported by the quote submitted.

As the tenancy agreement specifically prohibited use of the hot tub and in the absence of any disputing testimony from the tenant, I accept the landlord required the hot tub to be serviced and I find the tenants are responsible for the payment of that service.

While I accept the tenants still had access to the rental unit in the time period that the tenant agrees the hot tub cover went missing but after the landlord's agent had entered the unit in the absence of the tenant. As such, without additional evidence as to what happened to the cover, I find the landlord has failed to establish that the cover was removed by the tenants.

In regard to the landlord's claim for compensation for the replacement of an animal proof garbage container, I accept the tenant acknowledges that she disposed of the original container and that she tried to replace it. However, I also accept that the containers provided by the tenant were not animal proof and as such I find the tenant is required to compensate the landlord for the removal of the original container.

As to the landlord's claim for photocopies, I find these costs to be associated with the landlord's choices in presenting his case at this hearing and are not recoverable under the *Act*.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$6,592.29** comprised of \$5,900.00 lost and unpaid rent owed; \$90.00 hot tub servicing; \$526.00 yard clean up; \$26.29 garbage container 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 \$800.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$5,792.29**.

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: February 01, 2012.

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Residential Tenancy Branch