



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlords' 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 their 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 their sworn testimony, and to make submissions. The parties agreed that on October 15, 2011, the tenant gave the landlord oral notice to end this tenancy before her next monthly rent became due on November 11, 2011. She provided no written notice to end this tenancy. The tenant confirmed that the landlord handed her a copy of his dispute resolution hearing package on November 23, 2011. I am satisfied that the landlords served this hearing package and the parties served one another with their written evidence packages in accordance with the *Act*.

### Issues(s) to be Decided

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

### Background and Evidence

This one-year fixed term tenancy commenced on June 11, 2011. Monthly rent for this ground floor rental unit in a two level rental home was set at \$1,300.00, payable in advance on the 11<sup>th</sup> of each month. The tenant was also responsible for heat and hydro. The landlords continue to hold the tenant's \$650.00 security deposit paid on May 24, 2011, and a \$50.00 deposit for the remote garage door opener and a \$6.00 key

deposit both paid on June 4, 2011. The landlords entered into written evidence a copy of the June 4, 2011 joint move-in condition inspection report.

By October 15, 2011, the tenant had become so dissatisfied with the landlords' responses to a number of her concerns about her tenancy (e.g., mice infestation, ongoing issues regarding control of heat in the rental unit, ongoing renovations, access to the garage) that she gave the tenant an oral notice that she was planning to end her tenancy before her next month's rent became due.

The tenant moved her belongings out of the rental unit on November 5, 2011. Initially, the landlord who attended this hearing (the landlord) gave sworn testimony that no move out inspection was conducted. He subsequently changed his testimony to agree that he had participated in a joint move-out inspection with the tenant on November 6, 2011, at which time the tenant gave him the keys. The parties agreed that the landlords did not prepare a condition inspection report regarding the joint move-out inspection.

The landlords' application for a monetary award of \$1,533.57 included the following:

Item	Amount
Unpaid Rent November 11, 2011 – December 10, 2011	\$1,300.00
Damage to Door Lock	33.57
Renovation Costs	200.00
<b>Total Monetary Award Requested</b>	<b>\$1,533.57</b>

The landlords also applied to recover their \$50.00 filing fee and to retain the tenant's security deposit in partial satisfaction of the monetary award they were seeking.

At the hearing, the landlord also noted that he had entered into written evidence a copy of a utility bill that he had received after the landlords submitted their application for dispute resolution. Although the tenant's portion of this bill, \$104.18 was not specifically included in the landlords' original application for dispute resolution, the landlords did note in the Details of the Dispute section of their original application that they were expecting to receive a utility bill outlining further losses that the landlords would incur as a result of this tenancy. The tenant did not dispute her responsibility for the \$104.18 utility bill or for the landlords' \$33.57 claim for the damage to the door lock.

### 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.

Analysis - Landlords' Application for Recovery of Unpaid Rent

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. I find that the tenant was in breach of her fixed term tenancy agreement because she vacated the rental premises prior to the June 11, 2012 date specified in that agreement. There is undisputed evidence that the tenant did not pay any rent for the period after November 11, 2011 for her fixed term tenancy. Even in a month-to-month tenancy a tenant has to give the landlord notice to end a tenancy on the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent owing on November 11, 2011, the tenant would have needed to provide her notice to end even a month-to-month tenancy before October 11, 2011. Section 52 of the *Act* requires that a tenant provide any notice to end a tenancy in writing, which did not occur in this case. For the above reasons, I find that the landlords are entitled to compensation for losses incurred as a result of the tenant's failure to comply with the terms of the fixed term tenancy agreement and the *Act*.

However, section 7(2) of the *Act* also 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.

At the hearing, the landlord gave sworn oral testimony that he placed advertisements on Craigslist on or about November 16, 2011 to attempt to obtain another tenant for this rental suite. He testified that he kept this advertisement running on Craigslist for approximately one month. He said that the new tenant who commenced renting this rental suite on or about January 4, 2012 or January 6, 2012 contacted him on December 30 or 31, 2011 after having seen his advertisement on Craigslist. He said that the new tenant is paying the same \$1,300.00 in monthly rent he was receiving from the tenant in his application for dispute resolution.

In response, the tenant testified that she visited the property on November 30<sup>th</sup> and saw that new tenants had already moved into the rental unit. She said that she confirmed this with the tenant who lives upstairs from her formal rental unit. I asked the landlord to

comment on the tenant's testimony in this regard. He said that this could not have been possible because he was still advertising on Craigslist until mid-December 2011.

To clarify this point, I asked the landlord if he had a written tenancy agreement with the new tenant. He confirmed that he had a residential tenancy agreement with the new tenant and asked for a few minutes to locate it, which he did. He said the new tenant signed the lease on December 1, 2011 and commenced moving possessions into the rental unit about December 5, 2011. He said that his previous recollection of the new tenancy for this rental unit had been mistaken.

Based on the evidence presented, I find that the landlord did take some measures to mitigate the tenant's loss of rent for the month after she ended her tenancy. However, as he testified that he did not place advertisements on Craigslist until November 16, 2011, I find that he delayed taking measures to mitigate her losses after having received her notice to end this tenancy on October 15, 2011. I also find that the credibility of the landlord's sworn testimony was significantly diminished as a result of the repeated changes to his testimony regarding the move-out inspection and, more importantly, the dates when the new tenant signed the lease and when the rental unit was occupied. In addition to the significant difference in the dates in his revised testimony, the landlord was emphatic in his original testimony and in his initial response to the tenant's oral testimony. The landlord did not revise his testimony until it became apparent that he might be required to provide specific details regarding the particulars of the new tenancy for this rental unit. For these reasons, I attach little weight to the landlord's oral testimony.

By contrast, I found the tenant's evidence forthright and consistent throughout this hearing. She answered questions put to her clearly and without having to correct herself. She also made important concessions regarding both the damage to the door lock and the unpaid utility bill that added credence to her testimony.

I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' loss of unpaid rent. However, by delaying placing advertisements on Craigslist until November 16, 2011, I find it unlikely that the landlord would have been able to locate a new tenant interested in renting these premises before November 22, 2011. I also find that the landlord obtained a new tenant for this rental unit by December 1, 2011. As such, I find that the only loss of rent that the landlord is entitled to receive from the tenant is for the nine-day period from November 22, 2011 until November 30, 2011. I find that the landlord is entitled to a monetary award of 9/30 of the \$1,300.00 rent owing for that portion of the month following the end to this tenancy, a total amount of \$390.00.

Analysis – Landlords' Application for a Monetary Award for Damage

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. Although the landlord entered into written evidence a copy of the joint move-in condition inspection report of June 4, 2011, no joint move-out condition inspection report was issued by the landlord.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Section 36(2)(c) of the *Act* reads in part as follows:

**36** (2) *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord...*

*(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-out condition inspection report, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is limited. Other than his oral testimony, the landlords' only evidence of damage claimed as "renovation costs" in their application was a photograph of scratches to some of the paint. The landlord said that he repaired and repainted this portion of the rental unit that was damaged during this tenancy. The tenant denied that any damage was beyond normal and reasonable wear and tear. The landlord did not present receipts to confirm that the landlords incurred costs to repair damage done by the tenant. For these reasons, I find that the landlords have not submitted sufficient evidence to substantiate their claim for a monetary claim for \$200.00 in renovation costs. I dismiss the landlords' \$200.00 claim for renovation costs without leave to reapply.

I am satisfied that there is no dispute between the parties regarding the landlords' claim for reimbursement for the \$33.55 in damage to the door lock that resulted from this tenancy and for unpaid utilities in the amount of \$104.18. I issue a monetary award in the landlords' favour for these items.

Since the landlords have been partially successful in their application for dispute resolution, I allow them to recover \$25.00 of their filing fee from the tenant.

I allow the landlords to retain the monetary awards issued in this decision from the tenant's \$650.00 security deposit, \$50.00 remote garage opener deposit, and \$6.00 key deposit. No interest is payable over this period for the landlords' retention of these deposits. As was noted at the hearing, the *Act* does not allow landlords to retain more than one-half of one month's rent as a security deposit. Separate deposits for the remote garage door opener and keys are not allowed under the *Act*.

### Conclusion

I issue a monetary Order in the tenant's favour in the following terms which allows the tenant to recover that portion of her security, remote garage door opener and key deposits paid towards this tenancy less the amounts awarded the landlord for unpaid rent and utilities, damage, and one-half of the landlords' filing fee.

Item	Amount
Rent Owing at End of Tenancy (9/30 x \$1,300.00 = \$390.00)	\$390.00
Unpaid Utilities	104.19
Damage to Lock	33.57
Less Security, Remote Garage Opener and Key Deposits ((\$650.00 + \$50.00 + \$6.00 = \$700.06)	-700.06
Recovery of ½ Filing Fee	25.00
<b>Total Monetary Order</b>	<b>(\$147.30)</b>

The tenant is provided with these Orders in the above terms and the landlord(s) must be served with a copy of these Orders as soon as possible. Should the landlord(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: February 03, 2012

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Residential Tenancy Branch