



# 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 was convened by way of conference call in repose to the landlords application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for
  1. Unpaid rent or utilities?
  2. Damage to the unit, site or property?
  3. Money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security deposit?

### Background and Evidence

Both parties agree that this tenancy started on March 01, 2010 for a fixed term of six months. At the end of that term that tenants entered into a new tenancy agreement with the landlord for another fixed term ending on April 30, 2011. The tenancy carried on after that time as a month to month tenancy. Rent for this unit was \$1,000.00 per month due on the last day of each month in advance. The tenants paid a security deposit of \$475.00 on March 01, 2010.

The landlord testifies that the tenants failed to give the correct written notice to end their tenancy. The tenants had already vacated the rental unit on October 31, 2011 and then returned on November 01, 2011, returned the keys and gave the landlord written notice with their forwarding address. The landlord testifies that despite many attempts to re-rent the unit for November and December, 2011 the unit remained unrented until January 01, 2012. The landlord seeks to recover unpaid rent for November, 2011 and a loss of rental income for December, 2011 to a total sum of \$2,000.00.

The landlord testifies that because he had to keep the heating on low in the unit to prevent freezing and kept a light on for security purposes he had to transfer the utilities into his own name. As the landlord had to conduct many of the viewings to re-rent the unit in the evening he also required light to do this. The landlord therefore requests that the tenants pay the utility bills up to the time they could have legally ended their tenancy. The landlord testifies that the utilities owed from November 02 to December 31, 2011 are \$193.76.

The landlord testifies that the tenants had not cleaned the rental unit and left garbage in the unit which the landlord had to remove. The landlord testifies that he went to the unit on October 29, 2011 to carry out an annual inspection of the unit. The female tenant was home at that time and did not mention to the landlord that the tenants were moving out. At this inspection the landlord documented that the tub was in a filthy condition and

the linoleum floors were also in a dirty condition. The landlord testifies that after the tenants moved out he returned to the unit and found the tenants had not cleaned the bathtub, or the linoleum floors, the carpets were left dirty and the stove and fridge had been left unclean. The landlord also testifies that the bathroom walls had to be cleaned. The landlord testifies that he paid \$84.00 for a cleaner to clean the unit; \$56.00 to have the linoleum cleaned; \$105.40 for the carpets to be cleaned; and \$112.00 to have the bathtub cleaned by professional bath glazing company due to the high level of dirt in the bathtub. The landlord testifies that the tenants had not replaced burnt out light bulbs and three had to be replaced at a cost of \$10.25.

The landlord testifies that because the tenants ended the tenancy without proper notice the landlord had to advertise the unit for rent on a free internet site and in the local newspaper. The landlord seeks to recover these costs from the tenant of \$210.66 for advertisements from November 16, to November 29, 2011; from December 01 to December 14, 2011 and from December 18, 2011 to January 08, 2012. The landlord testifies that even through the unit was re-rented for January 01, 2012 he did not receive a refund from his advertisement.

The landlord testifies that originally there were three tenants named on the tenancy agreement. Two months prior to the tenants moving out of the unit the third tenant told the landlord that he was moving out of the unit. The landlord testifies that he asked the remaining tenants what they were going to do and they told him that they did not know. The tenants gave no indication that they could not afford to live in the unit or that they had plans to move out.

The landlord seeks to keep the tenants' security deposit in partial satisfaction of his claim for unpaid rent and seeks to recover the \$50.00 filing fee from the tenants.

The tenants' testify that the tenancy agreement states that if one tenant moves out then the tenancy will end and all the tenants must move out. The tenants state the landlord has filed his claim and not named the other tenant nor did the landlord indicate that all

the tenants would have to move out. The tenant testifies that NT told the landlord that they would not be able to afford the unit without the third tenant and that they would have to move out on October 01, 2011. The tenants dispute that they are responsible for rent for two months after the tenancy ended.

The tenants agree that there was some cleaning not done to the unit and some damages left at the end of the tenancy. The tenants testify that they had told the landlord many times that they could not clean the linoleum floors as the floors were old and kept breaking up, however the tenant states these floors were cleaned to the best of their ability at the end of the tenancy. The tenants agree that they failed to clean the stove, fridge and bathroom walls. The tenants testify that they had told the landlord that he could keep their security deposit to pay for cleaning the unit.

The tenants' testify that they had cleaned the carpets with a carpet cleaning machine two weeks before they moved out but state they do not have a receipt for hiring this machine.

The tenants dispute the landlords claim that they are responsible to pay the utility bill for utilities used after they had moved out and state this is no longer their responsibility. The tenants also dispute the landlords claim for advertising and state it is not their responsibility to pay for the landlord's advertising costs.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. S. 45(1) of the *Act* states:

(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenants argue that the landlord has not served all three of the tenants or did not end the tenancy after the third tenant moved out. I refer the tenants to the Residential tenancy Policy Guidelines #13 which state, in part, where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.

In effect the third tenant had moved from the rental unit two months before the other two tenants vacated the unit and as the tenants continued to pay rent they entered into a new agreement with the landlord which the third tenant was not party to.

Consequently, in this matter of the landlords claim for unpaid rent; as rent was due on the last day of each month the tenants should have given the landlord written notice to end their tenancy on September 29, 2011 in order for their notice to have been effective on October 31, 2011. As the tenants failed to provide written notice to the landlord by this date the earliest the tenants could have ended the tenancy by giving written notice on November 01, 2011 would be December 31, 2011. Consequently, I find the landlord did attempt to mitigate his loss by advertising the unit for rental and as such the landlord has established his claim to recover unpaid rent for November and December, 2011 to the sum of **\$2,000.00**. The landlord will receive a Monetary Order for this amount pursuant to s. 67 of the *Act*.

With regard to the landlords claim to recover unpaid utilities for the period of time after the tenants moved out; I have considered the arguments put forward in this matter and find as the tenants had moved from the rental unit they would not be responsible for paying the utilities after the date they moved out. This would be considered to be a cost of doing business as a landlord if the landlord required utilities to be left on to show the unit to prospective tenants and to protect the property from freezing. Consequently, this section of the landlords claim is dismissed without leave to reapply.

With regard to the landlords claim for advertising costs; the landlord argues that he would not have incurred this cost had the tenants given the landlord proper notice to end the tenancy. However it is my decision that the landlord could reasonable expect to incur advertising costs to re-rent a unit at the end of any tenancy and could reasonable expect to incur these costs regardless of whether or not the tenants had given the proper notice to end the tenancy. Consequently, this section of the landlords claim is also dismissed without leave to reapply.

With regard to the landlords claim for cleaning and carpet cleaning, I am satisfied that the landlord incurred costs to clean the unit and find it is likely that the tenants failed to leave the unit to a reasonably clean standard at the end of their tenancy as specified under s. 32 of the *Act*. Therefore, the landlord is entitled to recover cleaning costs of **\$112.00** to have the bathtub cleaned by a professional company dealing with excessively stained bathtubs; **\$56.00** to have the floors cleaned; and **\$84.00** to clean the stove, fridge and bathroom walls. I am not satisfied that the tenants left the carpets in a clean condition and the tenants have provided no receipts in evidence to show they hired a carpet cleaner two weeks before they moved out. Therefore, the landlord is entitled to recover the sum of **\$105.40** to have the carpets cleaned professionally. I further find the tenants are responsible to replace any burnt out light bulbs at the end of their tenancy as they failed to do so the landlord is entitled to recover the sum of **\$10.25** for three bulbs.

As the landlord has been partially successful with his claim I find the landlord is also entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord under s. 67 and 72 of the *Act* for the following amount:

Unpaid rent and loss of income	\$2,000.00
Cleaning costs	\$252.00
Carpet cleaning	\$105.40
Light blubs	\$10.25
<b>Subtotal</b>	<b>\$2,367.65</b>
Less security deposit	(-\$475.00)
Plus filing fee	\$50.00
<b>Total amount due to the landlord</b>	<b>\$1,942.65</b>

### 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 **\$1,942.65**. 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: February 06, 2012.

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Residential Tenancy Branch