



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: MNSD, MNDC, FF  
Tenant: MNSD

### Introduction

This hearing dealt with the cross Applications for Dispute Resolution. Both parties sought monetary orders.

The hearing was conducted via teleconference and was attended by the landlord and her witness and the tenant and her three witnesses. During the hearing the landlord had identified that she had two additional witnesses, however there was insufficient time to call the witnesses in to the hearing.

At the end of the hearing I advised that I would consider whether or not we would just adjourn and be reconvened at a later time to hear the testimony of the additional witness. However, upon consideration and the landlord's indication of what testimony the witnesses would be providing I find their testimony is no necessary to conclude this proceeding.

At the outset of the hearing I reviewed with the parties the tenant's submission of her additional evidence, all of which was served to the landlord and to the Residential Tenancy Branch (RTB) less than on or after March 20, 2012. RTB Rules of Procedure require that evidence must be served at least 5 days prior to the hearing.

The phrase "at least" excludes the day it is received by the other party and the RTB; the day of the hearing; and any weekend days. As such, the latest the tenant should have served her evidence was March 16, 2012. As the tenant failed to meet this deadline, I advised both parties that I would not be considering any of the tenant's evidence that had been served late.

The tenant requested to withdraw her Application until such time as she could serve her evidence in accordance with the Rules of Procedure. I advised the tenant that she could do so but that because the landlord had applied to retain the security deposit the security deposit would be dealt with in this hearing. The tenant did not alter her request to withdraw her Application; as such I accept the tenant's withdrawal.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; for cleaning and damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on May 9, 2010 for a month to month tenancy beginning on March 15, 2010 for a monthly rent of \$950.00 due on the 1<sup>st</sup> of each month with a security deposit of \$300.00 paid.

The tenancy ended by way of an order of possession granted to the landlord on November 28, 2011 with an effective date of January 1, 2012 at 1:00 p.m. The parties agree that the tenant did not fully vacate the rental unit until at least January 8, 2012.

The tenant and her witnesses all testified that they had left the unit clean except for any cleaning that could not be completed because the landlord had changed the locks on the rental unit on January 2, 2012 and only allowed the tenant restricted access.

The landlord provided a copy of a Condition Inspection Report showing both the start and end of tenancy conditions of the rental unit. The move out portion is signed by a third party who the tenant agreed was acting as her agent at the time. The signature acknowledges that he does not agree with the report because “didn’t have time to do final clean up”. The tenant testified that she now knows the agent was not acting in her best interests and disagrees with the condition as outlined in the report.

The landlord testified that due to the tenant not completing her move and cleaning and the condition being so bad that they could not rent the unit out for January or February 2012. The landlord testified a new tenant moved in and she did not charge him rent for February because he completed some of the cleaning and repairs that had been required.

The landlord seeks the following compensation:

Description	Amount
Lost revenue – January/February 2012	\$1,800.00
Part of the cleaning and restoration	\$300.00
Salary for employee in landlord’s store to complete repairs	\$300.00
Storage of vehicle and belongings left on property for 2 months	\$500.00
<b>Total</b>	<b>\$2,900.00</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 37 of the *Act* requires a tenant who vacates a rental unit must do so by 1 p.m. on the day the tenancy ends and leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. In the case before me the tenant was required to vacate the rental unit by 1:00 p.m. on January 1, 2012.

This means that the tenant had to have all her belongings removed and to have the rental unit cleaned no later than 1:00 p.m. on January 1, 2012. From the tenant's testimony she was not living in the unit but had not removed all of her possessions or completed her cleaning.

In addition, despite the tenant's assertion that the agent she had representing her was not acting in her best interests, by virtue of the fact the tenant had agreed to have him act as her agent she cannot now discount his input on the move out inspection.

As the move out inspection indicates the tenant's agent didn't agree with the condition only because the tenant did not have sufficient time to clean I find the tenant's agent was not disagreeing with the condition of the unit at the time of the inspection, rather he was agreeing with the condition and explaining why it was in that condition.

As such, I find the Condition Inspection Report reflects the true condition of the rental unit at the time of the move out inspection that was conducted long after the end date of the vacancy and that this date was so late because the tenant failed to completely vacate the unit in accordance with the order of possession.

As a result, I find it reasonable both from the extra time the tenant took to clean and the condition of the unit that the landlord was unable to rent the unit for the month of January 2012 and has therefore suffered a loss resulting from a violation of the *Act* and established the value of that loss to be equal to one month's rent.

As to the landlord's claim for lost rent for February, I find that the landlord was able to rent the unit to a new tenant effective February 1, 2012. The fact the landlord did not complete all the repairs and/or cleaning prior to the new tenancy and had the new tenant complete them to cover the rent for February 2012 was a choice the landlord made and therefore I find the landlord failed to mitigate this loss and is therefore not entitled to any compensation and I dismiss this portion of the landlord's Application.

In relation to the landlord's claim for compensation to hire an employee for a week to run her store in a neighbouring community while she had to complete repairs and cleaning is cost associated with how the landlord manages both her rental property and

her other business and is again a choice of the landlords that the tenant cannot be held accountable for. I dismiss this portion of the landlord's Application.

While I accept the condition of the rental unit is as outlined in the Condition Inspection Report, as noted above, and the landlord has therefore suffered a loss resulting from the tenant's violation of Section 37 of the Act, I find the landlord has provided no evidence to establish the value of the cleaning or restoration required or completed and as such, I dismiss this portion of the landlord's Application.

And finally in relation to the landlord's claim for storage of the tenant's belongings, including a vehicle, I find the landlord has provided no evidence to establish how this result in a loss to the landlord; the value of the loss; or any steps taken to mitigate this loss.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,000.00** comprised of \$950.00 lost revenue 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 \$300.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$700.00**.

This order must be served on the tenant. If the tenant fails 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: March 27, 2012.

---

Residential Tenancy Branch