



# 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 an Application for Dispute Resolution by the Landlords seeking a Monetary Order for damage to the unit, site or property, for unpaid rent or utilities, to keep all of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Is this a fixed term tenancy agreement or a month to month tenancy?
2. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
3. If so, have the Landlords met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to section 67 of the *Residential Tenancy Act*?

### Background and Evidence

The parties agreed they entered into a tenancy agreement that began on March 1, 2011 and ended December 3, 2011 when the Tenant vacated the property. Rent was payable on the first of each month in the amount of \$800.00 and on February 23, 2011 the Tenant paid \$400.00 as the security deposit. A condition inspection report was completed at the beginning of the tenancy in the presence of the Tenant however the Tenant did not attend a move out inspection.

The Landlord affirmed that towards the end of November 2011 the Tenant informed them verbally she was considering purchasing a house so at the beginning of

December 2011 they began advertising the unit for rent effective January 1, 2012. On December 3, 2011 the female Landlord attended the rental unit to pick up December 1, 2011 rent at which time the Tenant wanted the Landlords to use her security deposit as rent to which they refused. When the Landlords returned home four or five hours later the Tenant had abandoned the unit. The Tenant did not provide a forwarding address and the Landlords were able to find the Tenant by asking around town.

The Landlord confirmed the Tenant made no mention of moving out when they attempted to pick up rent that morning and she did not provide them with written notice to end her tenancy. The Landlord stated that initially they were going to let the Tenant out of the tenancy agreement but when she abandoned the unit without discussing it with them they decided to seek compensation for the remainder of the lease.

The Tenant did not clean the unit, did not leave the keys for the unit, and left it with some damage to the walls. The Landlord stated the tenancy was for a fixed term lease that did not end until March 1, 2012 and they were not able to re-rent the unit until March 1, 2012.

The Landlords are seeking the following monetary compensation:

\$2,400.00	Three months of loss of rent for December 2011, January 2012, and February 2012, of \$2,400.00 (3 x \$800.00);
\$180.00	Professional cleaning the unit – the entire unit including all appliances, bathrooms, walls and flooring had to be cleaned
\$200.00	Repair and touch up paint walls that had been damaged
\$ 50.00	To replace the door lock and for labour to do the work
\$ 40.00	Advertising to re-rent the unit

The Tenant affirmed she did not provide written notice to end her tenancy however she did provide verbal notice to the Landlords that she was looking into buying a place. The Tenant pointed out that her tenancy agreement does not specify written notice was required it only states 30 days notice. She could not confirm which date she informed the Landlords she had purchased the house and was moving out. She did not tell the Landlords the date she was moving but she does recall requesting they use her security deposit as rent.

The Tenant acknowledged that the paint peeled off when she removed a shelf she had attached to the wall. She states she cleaned the house after vacating it as she recalls sweeping the floors. She thought she was doing the Landlords a favour by moving out

quickly as there were people coming to look at the place to rent it and it was so small looking with her furniture inside.

### Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, a copy of the tenancy agreement and the Landlords' written statement titled "synopsis".

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.
- 5.

The evidence supports that the tenancy agreement was completed listing the following terms:

*Tenancy shall be for a term of one year, beginning on: March 1, 2011, and ending on March 1, 2012.*

*The tenant is required to give Thirty (30) days notice to the landlord prior to terminating tenancy, even if the tenant is leaving at the end of the lease.*

After careful consideration of the evidence before me I find the terms of the tenancy agreement to be unclear. Is this tenancy a fixed term tenancy which cannot be ended until the end of the fixed term pursuant to section 45 (2) of the Act, or is it a periodic tenancy that can be ended with thirty (30) days notice pursuant to section 45(1) of the Act?

Section 6(3)(c) of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. Accordingly I find the length of this tenancy to be unclear and therefore it reverts to a month to month tenancy.

The evidence supports the Tenant failed to pay December 1, 2011 rent pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Based on the aforementioned I find the Landlords have met the burden of proof and I award them a monetary claim of **\$800.00** for December 2011 unpaid rent.

The evidence supports that towards the end of November the parties discussed the Tenant purchasing her own home and the Landlords took action, as early as the beginning of December 2011, by advertising the unit for rent effective January 1, 2012. The Landlord affirmed that initially they were going to let the Tenant out of the lease and that after her action of abandoning the unit they decided to seek compensation in what appears to be retaliatory.

Based on the aforementioned I find that based on a balance of probabilities that by the end of November 2011 the Landlords were provided verbal notice that the Tenant would be vacating the unit by the end of December 2011. Having found that this tenancy was a month to month tenancy the Tenant's obligation does not extend past the thirty day notice period of December 31, 2011. Therefore, I find the Landlords have not proven entitlement to loss of rent for January and February 2012 and the claim is dismissed.

Section 32 (3) of the *Act* provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the *Act* provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and the tenant must return all keys or other means of access to the unit.

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the *Act*, leaving the rental unit unclean, with some damage and without returning the keys at the end of the tenancy.

After careful consideration of the aforementioned and the documentary evidence I hereby find the Landlord has met the burden of proof to establish a monetary claim for the amounts as indicated below, pursuant to section 67 of the *Act*.

*Residential Tenancy Policy Guideline #16* states that a Dispute Resolution Officer may award "nominal damages" which are a minimal award. These damages may be

awarded in the absence of proof of the actual cost of the loss, but they are an affirmation that there has been an infraction of a legal right. In this case the Landlords did not submit receipts as proof of the actual cost of their losses, therefore I find that the Landlords are entitled to nominal damages of **\$290.00** which is comprised of \$160.00 for professional cleaning the unit; \$100.00 for repairs and touch up paint walls that had been damaged and \$30.00 to replace the door lock and for labour to do the work.

In relation to advertising costs, I find that the Landlords have chosen to incur costs that cannot be assumed by the Tenant. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. In this case advertising costs are a cost of doing business and would have been incurred regardless of when the Tenant ended the tenancy. Therefore, I find that the Landlords may not claim advertising fees, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*. Accordingly I dismiss the claim for \$40.00 advertising costs.

The Landlords have been primarily successful with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid December 2011 Rent	\$800.00
Damages – cleaning, walls & locks	290.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$1,140.00
<b>LESS: Security Deposit \$400.00 + Interest 0.00</b>	<u>400.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 740.00</u></b>

### Conclusion

The Landlords' decision will be accompanied by a Monetary Order in the amount of **\$740.00**. This Order is legally binding and must be served upon the Tenant.

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: April 18, 2012.

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Residential Tenancy Branch