



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing deal with the landlord's amended application for a Monetary Order for unpaid rent; damage and cleaning costs; and, authorization to retain the security deposit. The landlord named two co-tenants in filing this application but only one tenant appeared at the hearing. I heard that the female co-tenant ceased residing in the rental unit several months before the tenancy ended and only the male co-tenant provided a forwarding address to the landlord. The landlord used the male tenant's forwarding address to send hearing packages to both co-tenants. I determined that only the male tenant was served with the hearing documents in a manner that complies with the Act. Therefore, I amended the application to exclude the female tenant as she was not served with the hearing documents.

Both parties in attendance at the hearing were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

1. Is the landlord entitled to unpaid rent for the months of January and February 2012?
2. Is the landlord entitled to compensation for damage and cleaning costs and if so, what is the landlord's loss?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

I heard the following undisputed evidence from the parties: The co-tenants and the landlord entered into fixed term tenancy agreement set to commence March 1, 2011 and expire February 29, 2012. The monthly rent was \$1,702.00 payable on the 1<sup>st</sup> day of every month. The tenants paid an \$825.00 security deposit on February 13, 2008 and the deposit was transferred to each successive tenancy agreement. The female

tenant ceased residing in the rental unit in July 2011 and the male tenant continued to reside in the unit until February 29, 2012.

It was also undisputed that the parties participated in move-in and move-out inspections together and the landlord provided the tenant(s) with copies of the inspection reports.

Below I have summarized the landlord's claims against the tenant and the tenant's responses.

**Unpaid rent - \$3,404.00**

The landlord is seeking to recover unpaid rent of \$1,702.00 for the months January 2012 and February 2012. It was the landlord's submission that the rent was paid through pre-authorized payment from the male tenant's bank account and after the tenancy ended the tenant's bank reversed the payments.

The tenant submitted the following: Up until August 2011 the landlord was withdrawing a portion of the rent payable from the male tenant's bank account and a portion from the female tenant's bank account. The pre-authorized payments for the female tenant's bank account were returned NSF for both August and September 2011. Upon receiving a 10 Day Notice to End Tenancy for Unpaid Rent in September 2011 the male tenant and the manager discussed the situation and to avoid eviction the landlord started withdrawing the full month's rent from the tenant's account in October 2011. This continued until the tenancy ended in February 2011. After the tenancy ended the tenant went to his bank and pointed out to his bank that the landlord did not have the proper authority to withdraw \$1,702.00 from his bank account every month. The bank agreed with the tenant and reversed the last two payments.

The tenant was of the position he is not responsible for paying the outstanding rent for January or February 2012 because 1) the co-tenant did not pay her portion of the rent after July 2011 and 2) the landlord made withdrawals from his bank account for which it was not authorized to do.

**Carpet cleaning and general cleaning - \$343.84**

The landlord is seeking compensation for carpet cleaning of \$142.24 and general cleaning of \$201.60. The tenant did not dispute these claims.

**Window replacement - \$588.00**

The landlord submitted that the window was broken during the tenancy and the tenant is responsible for the replacement cost. The landlord pointed to the move-in inspection report as evidence the window was not broken at the beginning of the tenancy.

The tenant submitted that he is not responsible for breaking the window and he attributes the breakage to an issue with the structure of the building. The tenant claimed the window was broken once before and that it was replaced at no cost to the tenants during a remediation process that took place approximately two years ago. At the time he was dealing with a different property manager than the one appearing at the hearing. The tenant pointed to the landlord's photograph of the broken window where it shows the origin of the break is below the window frame and only the exterior pane is cracked.

The landlord responded by stating that two years ago she was the property manager for this unit and she was not aware of any remediation of the building. The other property manager took over duties starting April 2011. The building was constructed approximately 12 years ago. The landlord submitted that something on the patio may have been pushed against the window, causing it to break.

The landlord provided the following documentation in support of this application: the tenancy agreement; the tenants' ledger account; condition inspection reports; photographs taken at the end of the tenancy; and, invoices for repairs and cleaning.

### Analysis

Upon consideration of the evidence before me I provide the following findings and reasons with respect to the issues under dispute.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

### **Unpaid rent**

The Act requires that a tenant pay rent when due in accordance with the terms of their tenancy agreement.

Rights and responsibilities of co-tenants are provided in Residential Tenancy Policy Guideline 13. The policy guideline explains that co-tenants are two or more tenants

who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement.

Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term unless the landlord and tenant sign a written agreement to end the lease agreement, or if new tenancy agreement is signed by the remaining tenant, then the first lease agreement is no longer in effect. In this case, the female tenant continued to have an obligation to pay rent under the tenancy agreement as the co-tenancy agreement was not ended; however, co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. If one tenant is pursued by the landlord then the responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Considering the above, I do not accept the tenant's position that he is not responsible for paying rent for the duration of the tenancy because there was a co-tenant that was not paying any rent. The tenant remains at liberty to pursue the other co-tenant for her share of the debt in the appropriate forum.

The Act provides for specific circumstances when a tenant may withhold rent or not otherwise pay rent owed to the landlord under the tenancy agreement. The tenant's submission that landlord withdrew of the full amount of rent from his bank account does not form a basis under the Act that entitles the tenant to withhold rent or otherwise not pay rent owed to the landlord under the tenancy agreement. Therefore, the tenant remains obligated to pay rent for the months of January and February 2012.

Based on the foregoing, I grant the landlord's request to recover unpaid rent of \$3,404.00 for the months of January and February 2012.

**Carpet cleaning and general cleaning**

As these claims were undisputed by the tenant I grant the landlords request to recover \$343.84 from the tenant for cleaning.

**Window replacement**

Upon review of the condition inspection report I accept that the window was not broken at the beginning of the tenancy and it was broken at the end of the tenancy. The issue to determine is who bears the burden to pay for the loss associated to the broken window.

Upon review of the photographs of the broken window, I accept that the origin of the break is at or near the bottom portion of the window frame. That frame appears to be a few feet above the level of the patio deck. Given the location of the window frame on the patio, I accept the landlord's submission that something pushed up against the frame may cause the window to crack.

The tenant submitted that the window had broken previously and had been replaced during a remediation project. The tenant's recollection was that this remediation took place a couple of years prior; yet, this is contradicted by the landlord's submission that she was property manager of the unit at that time and there was not a remediation project or window replacement.

On the balance of probabilities, I find I am not satisfied that the window broke due to a structural or building issue as submitted by the tenant. I make this determination based upon the following factors:

- I found the tenant's recollection of a purported remediation project vague and unsupported by any corroborating evidence such as witness testimony or confirmation from the strata;
- The tenant did not indicate when the window broke or that he reported the window break to the landlord; and,
- The tenant did not indicate the reason he objected to being responsible for the window break on the condition inspection report or in writing at any other time prior to the hearing.

In light of the above, I hold the tenant responsible for compensating the landlord for the loss associated with the broken window. However, I find the landlord is not entitled to recover the full replacement cost that it has claimed against the tenant. Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the window, I have referred to normal useful life of this item as provided in Residential Tenancy Policy Guideline 40.

Given the policy guideline provides that windows have a typical life of 15 years and the window was approximately 12 years old, according to the landlord, I find the landlord entitled to compensation equivalent to:  $\$588.00 \times 3/15 \text{ years} = \$117.60$ . The landlord is awarded \$117.60 for the broken window.

### **Monetary Order**

As the landlord was largely successful with this application I award the filing fee to the landlord. I further authorize the landlord to retain the security deposit and interest in partial satisfaction of the amounts awarded to the landlord. I calculate accrued interest on the security deposit to be \$10.92. The landlord is provided a Monetary Order calculated as follows:

Unpaid rent	\$ 3,404.00
Cleaning	343.84
Broken window	117.60
Filing fee	50.00
Less: security deposit	(825.00)
Less: security deposit interest	<u>(10.92)</u>
Monetary Order	\$ 3,079.52

The Monetary Order must be served upon the tenant and may be enforced in Provincial Court (Small Claims) as an Order of that court.

### **Conclusion**

The landlord has been authorized to retain the security deposit and interest in partial satisfaction of amounts owed to the landlord and the landlord has been provided a Monetary Order for the balance of \$3,079.52 to serve 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: May 17, 2012.

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Residential Tenancy Branch