



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR, MND, MNDC, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rental arrears owed in the amount of and damages to the rental unit totalling \$3,863.65.

Despite service by registered mail on February 6, 2012, the tenant did not appear.

### **Issue(s) to be Decided**

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for rental arrears owed and whether or not the landlord is entitled to monetary compensation for damages.

### **Background and Evidence**

The tenancy began as a fixed term in July 2010 and was ended pursuant to a Ten Day Notice to End Tenancy for Unpaid Rent effective January 13, 2012. Rent was \$750.00 and a security deposit of \$375.00 was paid. Submitted into evidence was a copy of the tenancy agreement, photos, copies of communications, receipts and a copy of the move-in condition inspection report signed by both parties and a move-out condition inspection report apparently completed in the tenant's absence.

The landlord testified that the tenant failed to pay rent for a portion of December 2011 and no rent for January 2012. The Ten Day Notice to End Tenancy for Unpaid Rent issued on January 3, 2012, indicated that the tenant was in arrears for \$800.00.

The landlord testified that the tenant left the carpets damaged and stained, and after attempts to clean them at a cost of \$85.00, it was determined that the 6-year-old carpet must be replaced. The cost was \$1,213.60. Receipts for these expenditures totalling \$1,298.60 were in evidence.

The landlord stated that the paint finishes were approximately 1.5 years old. The landlord testified that some of the walls had to be patched and repainted as the tenants

had put several holes them. The landlord determined that 50% of the repainting costs should be attributed to the tenant and is claiming \$585.00 for half the cost of his labour charged out at \$25.00 per hour and \$236.64 for the purchase of paint based on a receipt in evidence. The total claim for repainting was \$821.64.

The landlord testified that the tenant damaged several doors and bifolds requiring both repairs and replacement and is claiming the cost of the doors and hardware including \$12.91 for hinges, \$13.98 for bifold tracks, \$194.90 for doors and parts and \$292.50 for labour for the doors, "and other things". Receipts for the purchases were submitted.

The landlord testified that the blinds were damaged and is claiming \$76.90 for replacement costs. A receipt was submitted to verify the cost.

The landlord was also claiming the cost of his travel to and from the unit to do repairs, the cost of food and other supplies that were required for him to do the work himself. The landlord had submitted other receipts including the cost of administration and a bill for the cleaning costs.

### **Analysis**

#### **RENT**

With respect to the rent owed for December and January, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. In this instance I find that the tenant did not pay the rent which was to be paid when it was due. I find that the landlord is entitled to be compensated \$800.00 based on the amount shown on the Ten Day Notice to End Tenancy for Unpaid Rent .

#### **REPAIRS**

With respect to an applicant's right to claim damages from another party, section 7 of the Act provides that if a party fails to comply with the Act or agreement, the non-complying party must compensate the other for any damage or loss that results. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

##### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In regard to the claimed costs for cleaning and damages, I find that section 37(2) of the Act states 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.

In establishing whether or not the tenant had complied with this requirement, I find that this can best be established with a comparison of the unit's condition when the tenancy began with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures. Section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, the landlord conducted a move-in condition inspection with the tenant that was properly signed by both parties. However, the move-out condition inspection report was done in the tenant's absence.

With respect to the move out inspection, that was conducted on January 19, 2012, after the tenant had vacated, I find that only the landlord participated and filled out the report.

Section 35 of the Act states that, in arranging the move-out inspection, the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Part 3 of the Regulation goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and the content of the Reports to be conducted and section 17 of the Regulation states that:

- (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
  - (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
  - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

The Act states that the landlord must make the inspection and complete and sign the report without the tenant if:

- (a) the landlord has complied with subsection (3), and
- (b) the tenant does not participate on either occasion.

I find that the landlord did not offer the tenant two different inspection dates in writing and failed to issue a "Notice of Final Opportunity to Schedule a Condition Inspection" on the approved form as required.

Section 36 (2) of the Act states that the right of the landlord to claim against a security deposit, for damage to residential property is extinguished if the landlord does not comply with section 35 (2) [*2 opportunities for inspection*],

In any case, I must find that, the value of the move-out condition inspection report was affected by serious procedural deficiencies that function to negatively impact the evidentiary weight of this report. That being said, the landlord's claim for damages will still be considered solely on the preponderance of other evidence submitted.

In regard to the damaged and stained carpets, I find that the landlord's claim has met all elements of the test for damages. However, I find that 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 take into account the age of the damaged item and reduce the replacement cost to reflect the depreciation of the original value. In order to estimate depreciation of the replaced item, reference can be made to Residential Tenancy Policy Guideline 37 to assist in accurately assessing what the normal useful life of a particular item or finish in the home would be. I find that the average useful life of flooring is set at 10 years. I find that the landlord is entitled to be compensated in the amount of \$519.44 for the cost of both the cleaning attempt and replacement of the damaged floors.

With respect to the repainting, I accept that the damage to the walls specifically caused by the tenant necessitated repainting of approximately 50% of the unit. I accept that half the cost of labour was \$585.00 and that half the cost of paint was \$118.32 for a total outlay for the tenant's portion of \$703.32. As the finish was approximately 1.5 years old and the average useful life of an interior paint finish is set at 4 years, I find that the landlord is entitled to be compensated 62.5 % of the costs totalling \$439.58.

With respect to the cost to restore or replace the damaged doors, I accept the claimed costs for purchases of \$221.79 and based on the age of the doors, I find that the landlord is entitled to 25% of these costs totalling \$55.45.

In regard to the labour costs of \$292.50, for doors and other things, I accept this claim and find that it also includes the cost of cleaning.

With respect to the \$76.90 cost of replacement for the blinds, I find that the landlord is entitled to 60% for a total of \$46.14.

I find that the landlord's other expenditures, although genuine, must be dismissed as they are in the realm of administrative costs that must be incurred by the landlord in the course of conducting his rental business.

I find that the landlord has established a total monetary claim of \$2,203.11, comprised of \$800.00 rent owed, \$519.44 for new flooring, \$439.58 for the tenant's share of the repainting, \$55.45 for door supplies, \$292.50 for labour and cleaning charges, \$46.14 for blinds and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$375.00 in partial satisfaction of the claim leaving a balance due of \$1,828.11.

### **Conclusion**

I hereby grant the Landlord an order under section 67 for \$1,828.11. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The remainder of the landlord's application is dismissed without leave.

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 04, 2012.

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Residential Tenancy Branch