



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

**Dispute Codes:** MNR, MND, MNSD, FF

## **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for loss of rent , cleaning and damages totalling \$1,687.00. The hearing was also to deal with a cross application by the tenant seeking the return of his security deposit minus utilities agreed as owed.

Both parties appeared and gave testimony.

A previous hearing was held and the decision was in favour of the landlord, after which the tenant made a successful application for review consideration. The applications of both parties are therefore being re-heard.

## **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 loss of rent and damages or whether the tenant is entitled to the return of all or part of his security deposit.

## **Background and Evidence**

The tenancy began in September 2010 and ended on October 31, 2011. A security deposit of \$450.00 and pet damage deposit of \$450.00 were paid.

The landlord testified that the tenant gave verbal notice to vacate at the end of September 2011. The landlord testified that the parties agreed that the tenant would "make the place available" for showing . The landlord stated that he asked the tenant to ensure the unit was reasonably clean. The landlord testified that the tenant never made his place available nor did he clean up the unsightly garbage outside his unit. The landlord testified that this caused a delay in showing the unit and made it impossible to find a tenant for October 1, 2012. The landlord is claiming \$900.00 for the lost revenue.

The tenant acknowledged that he had not provided written notice, but pointed out that the landlord was well aware that he was vacating and they even discussed showing the unit. However, according to the tenant, the landlord made no effort to show the rental

unit despite the fact that he had the right to do so under the Act and also had the tenant's permission as well. The tenant's position is that the landlord is responsible for the failure to find a new tenant by October 1, 2012.

The landlord testified that the tenant left outstanding utility bills and the landlord is claiming \$267.00. The tenant agreed that the utilities were owed.

The landlord testified that the tenant left the rental unit in a state that required cleaning carpet cleaning, repairs, painting, light bulbs and rekeying. Totaling \$520.00 which is being claimed. The landlord submitted photos and written testimony about the what transpired. No receipts were placed in evidence to support the expenditures.

The tenant disputed the above claims and pointed out that the landlord did not comply with the Act by conducting a move-in and move-out condition inspection reports in accordance with the regulations.

### **Analysis**

Based on the testimony and the evidence, I accept that the tenant owes utilities in the amount of the 267.00 as claimed by the landlord.

With respect to the landlord's claim for damages, 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

For 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 a comparison of the unit's condition when the tenancy began with the final condition of the unit after the tenancy ended would be ideal. 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 did not submit a copy of a move-in condition inspection report nor a move-out condition inspection report signed by both parties. I find that this has affected the evidentiary weight of the landlord's claims for damages. Given the lack of the condition inspection reports and missing invoices for the claimed expenditures, I find that the test for damages has not been met and the landlord's claims for damages must be dismissed.

With respect to the landlord's claim for compensation for loss of rent, I accept that the tenant violated the Act by not providing written Notice to vacate. However, in order to satisfy element 2 of the test for damages, the landlord must also prove that the violation of the Act caused the loss. In addition, to meet element 4 of the test for damages, the landlord must prove that reasonable efforts were made to mitigate the loss. This would include proof that the landlord advertised the unit and tried to show it.

It is evident that the landlord did not show the unit based on his assumption that it was not fit to be shown and that renters would likely be "turned off". However, I find that it is reasonable to expect that the landlord would at least allow potential renters who responded to the ads to judge the unit for themselves. If the landlord took these steps to mitigate and still failed to find a new renter, then the test for damages would likely have been met. Given the above, I find that the landlord's claim for loss of revenue must be dismissed.

Based on the evidence, I find that the landlord is entitled to total monetary compensation in the amount of \$267.00 for utilities owed. I find that the landlord must deduct this amount from the \$900.00 security and pet damage deposits owed to the tenant leaving a balance of \$633.00 in favour of the tenant.

### **Conclusion**

I hereby grant the tenant a monetary order under section 67 for \$633.00. 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.

Each party is responsible for their own filing fees.

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 23, 2012.

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Residential Tenancy Branch