



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR, MNSD, MNDC, FF

### **Introduction**

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A Monetary Order for unpaid rent / loss of revenue - Section 67;
2. A Monetary Order in compensation for damage or loss under the Act, regulation or tenancy agreement – Section 67
3. An Order to retain the security / pet deposit - Section 38
4. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given opportunity to resolve their dispute, present all relevant evidence and testimony in respect to the claim and to make relevant prior submission to the hearing and participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The landlord's claim on application is as follows:

Unpaid hydro utility	\$54.81
Carpet cleaning	\$157.50
Filing fee	\$50.00
<b>Total of landlord's claim on application</b>	<b>\$1762.31</b>

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

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The following is undisputed. The tenancy began on December 01, 2011 and ended March 01, 2012 when the tenant vacated. Rent in the amount of \$1500.00 was payable in advance on the first day of each month, plus costs of utilities at 20%. At the outset of the tenancy the landlord collected a security deposit in the amount of \$750.00 which the landlord currently retains. There was no start of tenancy inspection conducted, and no end of tenancy inspection conducted in accordance with the Act. The testimony of the landlord and the tenant is that the tenants gave the landlord *verbal notice* to end the tenancy (February 29, 2012) on February 05, 2012. The landlord testified that throughout the month of February they advertised the rental unit for March 01, 2012 but determined not to show the suite on 3 occasions throughout the month, as they determined the suite was not presentable to be shown – despite some written requests to the tenant that the suite was to be shown. The tenant testified that they vacated the rental unit in the later part of March 01, 2012. The landlord claims that on March 01, 2012 they had a potential renter for the rental unit, and was to view the unit on March 01, 2012 to take possession on the same day, but that the tenant was still not vacated from the unit. the landlord provided photographic evidence that the rental unit was not vacated March 01, 2012. As a result, the landlord seeks loss of revenue for March 2012. The tenant claims that within the month of February 2012 they only received one notice to show the rental unit.

The landlord is claiming unpaid utilities of \$54.81 for Hydro and \$115.16 also for Hydro. The tenant does not dispute either of these 2 claims. The landlord further claims carpet cleaning costs of \$157.50 for specialized cleaning of a wool carpet. The tenant disputes the landlord's claim, testifying that they were not aware the carpet had been soiled or stained. The landlord claims they have paid for the carpet cleaning, but have not provided proof of this claim.

### **Analysis**

I have considered all evidence and all submissions to this claim and have considered all testimony given in the hearing.

On the preponderance of all the evidence advanced, and on the agreement by the tenant I am satisfied the landlord is entitled to unpaid utilities totalling **\$169.97**.

I must emphasize that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, solely, of the actions or neglect of the other party 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.

Therefore, the claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify *the actual monetary amount of the loss or damage*. Finally, the claimant must show that reasonable steps were taken to address the situation and to reasonably mitigate the damage or losses that were incurred.

In the absence of a move out inspection with the requisite report indicating that the carpet was stained, and in the absence of an invoice for carpet cleaning I find the landlord has not met the test for their claim for carpet cleaning in the amount off \$157.50. Therefore, **I dismiss** this portion of their claim, without leave to reapply.

Sections **45, 52 and 37** of the Act respectively state:

**45 Tenant's notice**

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice,
  - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
  - (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
- (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*

**52 Form and content of notice to end tenancy**

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
  - (e) when given by a landlord, be in the approved form.

**37 Leaving the rental unit at the end of a tenancy**

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find that the tenant did not provide the landlord with Notice to End the tenancy in accordance with the Act, and did not vacate and clean the rental unit in advance of the following month in accordance with the Act. I find the landlord has not provided proof that they advertised the rental unit and that they were afforded opportunities to re-rent the unit for March 01, 2012. However, on the preponderance of the evidence and the testimony of both parties, on balance of probabilities I accept that the landlord was placed at a disadvantage by the actions and non-compliance with the Act by the tenant in their attempts to re-rent the suite for March 01, 2012. I have not been provided evidence that the landlord continued attempts to re-rent the suite after March 01, 2012 for any portion of March 2012 to mitigate losses of revenue. As a result, I grant the landlord loss of revenue compensation of one half of the monthly rent payable for March 2012 – in the amount of **\$750.00**, without leave to reapply. The landlord is further entitled to recover the filing fee of **\$50**, for a total entitlement of **\$969.97**. The security deposit will be off-set from the award made herein.

### ***Calculation for Monetary Order***

Unpaid utilities total	\$169.97
Filing Fees for the cost of this application	50.00
Less Security Deposit	-750.00
<b>Total Monetary Award</b>	<b>\$219.97</b>

### **Conclusion**

**I Order** that the landlord retain the security deposit of \$750.00 in partial satisfaction of their claim and **I grant** the landlord an Order under Section 67 of the Act for the balance

due of **\$219.97**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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 07, 2012

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Residential Tenancy Branch