



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, MNSD, MNDC, O, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing on April 25, 2012 was conducted via teleconference and was attended by the landlord; his agent and the tenant. The hearing on May 17, 2012 was conducted via teleconference and was attended by the landlord; his agent; the tenant and her witness. The tenant also arranged for additional witnesses to attend May 17, 2012 but they were not called upon to provide testimony.

At the April 25, 2012 the landlord confirmed that the bulk of their evidence was served on the tenant by express mail on April 18, 2012. The tenant testified she received the evidence on April 19, 2012.

Residential Tenancy Branch Rule of Procedure 3.5 stipulates that copies of evidence the applicant intends to rely upon at the hearing must be served on the respondent as *soon as possible and at least 5 days prior to the hearing*. Despite having evidence in the landlord's submission dated no later than March 12, 2012, I find the landlord could have served the tenant much sooner with the evidence.

As a result I find that to proceed with the hearing without the tenant having an adequate opportunity to develop a response would be prejudicial to the tenant and as such with the agreement of both parties I adjourned the hearing to be reconvened on May 17, 2012. I advised the parties that Notice of Hearing documents would be sent directly to each of them.

I further ordered the tenant to provide any evidence she intended to rely upon to the landlords and the Residential Tenancy Branch no later than Friday, May 4, 2012 and the landlord to serve any responsive or additional evidence to the tenant and the Residential Tenancy Branch no later than Friday May 11, 2012.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; for damage to the rental unit; for damage or loss; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for

Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

Both parties provided a copy of a tenancy agreement signed by the parties on April 28, 2011 for a 6 month fixed term tenancy beginning on May 1, 2011 that converted to a month to month tenancy on November 1, 2011 for a monthly rent of \$800.00 due on the 1<sup>st</sup> of each month with a security deposit of \$400.00 paid on May 1, 2011. The parties agree the tenancy ended on February 29, 2012.

The parties agree the tenant gave the landlord notice of her intention to end the tenancy in a letter dated February 18, 2012 (submitted into evidence by both parties) that states she intends to end the tenancy “on the last day of the current month, Wednesday February 29<sup>th</sup>, 2012.”

The tenant goes on to provide reasons as to why she is ending the tenancy including that: the rental unit was not “fully-functional” at the start of the tenancy; she has never been issued receipts for rental payments; she believes that the staining of grout that was identified to her at the start of the tenancy is mould which she states is a health hazard; she felt uncomfortable and unsafe when the landlord attended her rental unit at 11:00 p.m. on January 32, 2012; and that for the past week a drain pipe was broken causing flooding along the walkway.

In her testimony the tenant s identified that she had verbally requested copies of all rent receipts at the start of February 2012 and when the landlord failed to provide her with the receipts she gave her landlord her notice. The tenant indicated that it is a term in the tenancy agreement that the landlord is required to provide a receipt for rent paid in cash and she was concerned the landlord would attempt to claim that she had failed to pay rent at sometime.

The landlord seeks compensation for the tenant’s short notice to end tenancy as he was not able to rent the unit out for March 2012 based partly on this short notice and partly on the condition of the rental unit. The landlord testified that he has not yet attempted to rent the unit because he is injured and cannot physically do the work required to repair damage or clean the rental unit, nor can he afford to hire someone to complete the work.

The landlord submits the tenant had painted the rental unit, without his consent, and that as a result of the tenant doing a poor job of painting, the entire unit requires painting. The tenant and her witness testified she had offered to provide the landlord with paint but that he declined the offer. The landlord and his agent testified they do not recall the tenant making this offer.

The landlord submits the tenant failed to clean the rental unit properly and the unit requires cleaning. The tenant testified that she had cleaned the unit completely, except

for behind the fridge because she could not move it. The tenant's witness testified that the tenant had spent the entire day cleaning the rental unit.

The landlord provided a copy of a Condition Inspection Report stating the move out condition inspection was conducted on May 1, 2011, however the landlord clarified in the hearing the inspection was completed on February 29, 2012. The tenant confirmed this date. In the Report the landlord has made the following notations; in the living room the ceiling is scuffing with paint and there is paint on the electrical outlets; the toilet is broken; the master bedroom there is paint on the ceiling and a box spring and mattress were left behind.

The tenant testified that she had left the box spring and mattress behind because she did not want to transfer any mould to her new accommodation. The tenant indicates she believed there was a mould problem in the unit and as a result the bed had been contaminated with it. The landlord dispute there was a mould problem in the rental unit.

Both parties provided written statements from their respective experts regarding mould. The landlord provided a note from a plumber stating he had inspected the area and found no water damage or mould growth.

While the tenant testified that she had a carpenter inspect the unit the written statement submitted by the tenant's expert provides no indication of his qualifications or experience. His written statement he identifies several points of possible water infiltration. He goes on to say the tenant showed him mould growing on tile (possibly from water ingress). The expert says nothing about finding any wet or damp areas or any evidence of current or past water damage.

The landlord also claims for the replacement of the bathroom window screen. Both parties acknowledge that in 2011 the landlord had windows replaced on the residential property. The tenant testified there never was a screen in the bathroom window. The landlord testified that all the new windows were installed with screens.

Both parties provided photographic evidence. The tenant submits that most of her photographs were taken on February 29, 2012 and the landlord clarified his pictures were taken during the week of March 12 to 15, 2012. The landlord testified that he had not completed the Condition Inspection Report more fully because he wanted to have photographic evidence.

The landlord seeks the following compensation:

Description	Amount
Lost Revenue due to short notice	\$800.00
Painting	\$1,120.00
Cleaning	\$325.00 - \$367.00
Window Screen Replacement	\$28.00
Mattress Removal	\$100.00
<b>Total</b>	<b>\$2,373.00 - \$2,415.00</b>

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy 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.

Based on the testimony of the tenant, I find the tenant did not provide the landlord with written notice that he had failed to comply with a material term of the tenancy agreement at any time prior to the letter dated February 18, 2012. I also find, based on the content, that the intent of the letter of February 18, 2012 was specifically to end the tenancy and not to provide the landlord with written notice of his failure to comply with a material term or to provide him with a reasonable time to correct the failure.

As such, I find in order for the tenant to end the tenancy she was required to provide the landlord with a notice as outlined above under Section 45(1) of the *Act*, and the earliest the tenant could have ended the tenancy would have been March 31, 2012.

As such, I find the landlord has established he has suffered a loss and that the loss results from a violation of the *Act*. I find also the landlord has established the value of that loss to be rent for the month of March 2012.

Section 7 of the *Act* requires a party who claims compensation for damage or loss that results from the other party's non-compliance with the Act, regulations or tenancy agreement must do whatever is reasonable to minimize the damage or loss. While I accept the landlord himself has been incapacitated due to an injury and has been unable to complete any work on the rental unit, I find that, by his own testimony, the landlord has taken no steps to try to re-rent the unit and it remains empty to this date.

Despite the landlord's claim that he didn't try to re-rent the unit because it needed painting and cleaning and he has completed neither because of his injury and current limited income, I find the landlord cannot hold the tenant responsible for this loss if he or an agent acting on his behalf have taken no steps at all towards mitigation. I dismiss this portion of the landlord's claim.

I find, based on the balance of probabilities and the landlord's testimony, that when the landlord had new windows install they all included screens. From the testimony of both parties I accept there was no bathroom window screen at the end of the tenancy. As such, I find the landlord has established that he has suffered a loss; that the loss results from the tenancy; and the value of the loss of \$28.00 from the submitted estimate. I find it was not necessary to take any steps to mitigate this loss.

I find, based on the testimony of both parties, that the tenant did leave a box spring and mattress in the rental unit and as such the landlord has suffered a loss for the costs to remove the items. However, despite the landlord's testimony that it cost approximately \$100.00 to remove these two items, he has provided no documentary evidence of this cost. The landlord has submitted a page of a document that appears to be from a print from a website that lists a mattress and box spring but there is no value attached. I dismiss this portion of the landlord's claim.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

I accept the parties completed a move out inspection on February 29, 2012 and the landlord completed the move out condition section of the Condition Inspection Report, with no indication of any cleaning requirements.

Despite the landlord's submission of photographic evidence, I find I cannot rely on those photographs as they were taken a substantial length of time after the end of the tenancy and do not necessarily reflect the condition at the time when both parties attended the inspection. Therefore, I find the landlord has failed to establish the need for cleaning of the rental unit and I dismiss this portion of the landlord's claim.

In relation to the landlord's claim for painting I find the tenant did not have the consent of the landlord to paint the unit and as such at the end of the tenancy the tenant was

required to return the paint to either the original colour or a colour agreed upon by the landlord.

Even if I were to accept the tenant's position that the landlord failed to mitigate by refusing the tenant's offer to provide paint, the provision of the paint in itself is not sufficient to negate the tenant's responsibility for the completion of the painting. For these reasons I find the landlord has established that he has suffered a loss and that the loss results from a violation of the *Act*.

However, from the landlord's submission of an estimate for painting costs I find that the estimate does not include the address for where the work is to be completed. In addition as the landlord has not had the work completed yet there is no accounting of the actual loss suffered by the landlord, as such I find the estimate to be unreliable as an accurate reflection of the loss and I find the landlord has failed to establish the value. I therefore dismiss this portion of the landlord's claim.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$28.00** comprised of the replacement costs for the bathroom window screen. As the landlord was largely unsuccessful in his claim I dismiss his request to recover the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct this amount from the security deposit held in the amount of \$400.00 in satisfaction of this claim. I grant a monetary order to the tenant for the balance of the security in the amount of **\$372.00**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 18, 2012.

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Residential Tenancy Branch