



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNSD MNDC FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The landlord and both tenants participated in the conference call hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

### Background and Evidence

The tenants are the former owners of the rental property. The tenants were living in the upstairs portion of the house when ownership was transferred and they became tenants of the new owner. Other tenants remained in the downstairs suite and their tenancy continued with the new owner as their new landlord.

The landlord and the tenants dispute whether the tenancy began on December 30, 2010 or January 1, 2011. The monthly rent for the suite was \$1350, and the tenants rented a workshop on the residential property for \$200 per month, for the months of January 2011 and February 2011 only. The tenants paid the landlord a security deposit of \$675. The tenancy agreement indicates that electricity, water supply and sewage disposal were not included in the rent. No parking fees were indicated.

The landlord and the tenants carried out a joint move-in inspection and signed the condition inspection report on December 30, 2010. The report indicates "1 cracked window" in the basement.

The tenancy ended on February 29, 2012. The landlord and the tenants carried out a move-out inspection, but the tenants refused to sign the condition inspection report.

### *Landlord's Evidence*

The tenancy began on December 30, 2010, as indicated in the tenancy agreement. The tenants did not pay prorated rent to the landlord for the first two days of the tenancy. Further, the tenants collected rent from the downstairs tenant for the entire month of December 2010, and did not reimburse the landlord for the prorated amount for December 30 and 31, 2010 for the downstairs tenant. The landlord has claimed \$100 in prorated rent for the tenants, and \$50 in prorated rent for the downstairs tenant for December 30 and 31, 2010. The landlord acknowledged that originally her date of possession of the property was supposed to be January 1, 2011, but because January 1, 2011 was a holiday, the date was adjusted to December 30, 2011.

The tenants failed to pay the sewer bills. The landlord has claimed \$174.96 for the sewer bills for the duration of the tenancy.

The tenants had a recreational vehicle (RV) parked beside the workshop from April 2011 through February 2012. The landlord unsuccessfully tried to negotiate parking for the RV. The landlord acknowledged that the workshop was vacant for some time after the tenants stopped renting it. The landlord has claimed \$1100 in parking, at \$100 per month for 11 months.

At the end of the tenancy the landlord discovered that two of the basement windows were cracked. The landlord has claimed \$173.60 for replacement of the second cracked window, which was not cracked at the outset of the tenancy.

### *Tenants' Response*

The tenants submitted a copy of the contract of purchase and sale, which indicates that the rent would start on January 1, 2011. The landlord changed the rental start date on the tenancy agreement after the tenants had signed it.

The contract of purchase and sale indicates that the tenants would pay for hydro, cable, internet and water. Nowhere does it state that utilities would include sewage charges.

The landlord knew of the crack in the window, and it was her responsibility to replace the window.

Nowhere in the tenancy agreement does it say that the tenants must pay for parking. The parking spot where the RV was parked belongs to the workshop.

### Analysis

Upon consideration of the evidence, I find as follows.

The landlord is not entitled to the amounts claimed for prorated rent. I find that on a balance of probabilities the tenants were responsible for rent beginning January 1, 2011, as set out in the contract of purchase and sale. If the tenancy with the downstairs tenants began on December 30, 2011, the landlord ought to have dealt with that issue when negotiating the purchase of the property. This portion of the landlord's application is dismissed.

The tenancy agreement indicates that sewage disposal is not included in the rent. I find that the tenants are responsible for the sewage charges, and I grant the landlord's claim for sewage bills of \$174.96.

The landlord is not entitled to the amount claimed for parking. The RV was parked beside the workshop, which was not part of the residential property, and the landlord therefore cannot claim for parking under the residential tenancy agreement.

The landlord is not entitled to the amount claimed for window replacement. The landlord failed to provide any evidence that the window cracked as a result of the tenants' actions during the tenancy. The landlord is responsible for any damage to the rental property that occurs due to the age and condition of the property.

As the landlord's claim was only partially successful, she is not entitled to recovery of the \$50 filing fee for the cost of her application.

### Conclusion

The landlord is entitled to \$174.96. The balance of the landlord's claim is dismissed.

I order that the landlord retain \$174.96 from the security deposit in full satisfaction of the award, and I grant the tenants an order under section 67 for the balance of the security deposit, in the amount of \$500.04. This order may be filed in the Small Claims Court and 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 25, 2012.

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Residential Tenancy Branch