



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The parties agreed that this tenancy ended on March 31, 2012, when the tenant vacated the rental unit on the basis of her March 14, 2012 written notice to end this tenancy. The tenant's agent (the agent) confirmed that the tenant received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on April 17, 2012. I am satisfied that the parties served one another with the above documents and their written evidence packages.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on February 1, 2010. At the expiration of the initial term, the tenancy continued as a periodic tenancy. Monthly rent by the end of this tenancy was set at \$829.00, payable in advance on the first of each month, plus heat and hydro. The landlord continues to hold the tenant's \$397.50 security deposit paid on January 31, 2010.

The landlord applied for a monetary award of \$963.00. This amount included an undisputed amount of \$84.00 for carpet cleaning. In dispute was the landlord's \$829.00 claim for unpaid rent/loss of rent for April 2012.

The tenant submitted written evidence that her health had been affected by the landlord's failure to address her concerns about black mould in the rental unit. In addition to limited photographic evidence, she entered into written evidence a copy of a February 10, 2012 note from her family doctor stating that she needed to move out of her apartment as soon as possible due to the mould and that she could die if she didn't. The tenant entered into written evidence a copy of an April 30, 2012 note from her respiratory medical specialist in which the specialist stated that the tenant "was diagnosed with hypersensitivity pneumonitis secondary to mold in her old residence" (the rental unit). This doctor confirmed that both she and the tenant's family doctor "strongly advised she move out of her old apartment as soon as possible, as she was developing increasing lung damage from recurrent exposure to mold." The specialist confirmed that staying in the rental unit was "life threatening." This specialist noted that she was doing very well after moving to another apartment.

#### Analysis

I allow the landlord a monetary award of \$84.00, as the parties agreed that this amount is not disputed by the tenant.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for April 2012, the tenant would have needed to provide her notice to end this tenancy before March 1, 2012. Section 52 of the *Act* requires that a tenant provide this notice in writing. For these reasons, I find that the tenant did not comply with the provisions of section 45(1) of the *Act*.

There is undisputed evidence that the tenant did not pay any rent for April 2012. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided considerable written evidence to demonstrate that advertisements were placed in local newspapers for the availability of rental units in the tenant's building. The landlord said that she has had difficulty renting units in the

tenant's building because of a number of factors (e.g., location; drug use in this building; second floor units do not seem to be attractive to prospective tenants, etc.). She testified that the tenant's former rental unit remains vacant, almost 2 ½ months after the tenant left this property.

I found the landlord's written evidence of advertisements confusing as it included listings for many other of the landlord's properties. I asked the landlord a number of times to clarify exactly when the tenant's rental unit was advertised in the various newspapers. After considerable prompting, the landlord's best sworn testimony was that she "imagined" that this commercial landlord started advertising this unit's availability on April 1, 2012, after the landlord was certain that the tenant had vacated the rental unit on March 31, 2012.

Based on the evidence presented, I am satisfied that the landlord has discharged some of the duty under section 7(2) of the *Act* to minimize the tenants' loss. However, I find that the landlord delayed taking specific measures to try to re-rent the premises to another tenant until April 1, 2012. By that time, it may have been too late to find a tenant for April 2012. The landlord is still unable to rent the premises to another tenant. It remains unclear as to whether the landlord experienced loss of rent for April 2012 because:

- the tenant delayed giving her notice to end this tenancy;
- the landlord delayed commencing the advertising process for the availability of this rental unit;
- the landlord has an apparent glut of other non-desirable rental units in this rental building;
- the landlord has admitted difficulties in maintaining this rental property as a drug-free building; and/or
- the landlord has failed to address the mould conditions in the rental unit reported by the tenant.

Based on a balance of probabilities, I find that a combination of some or most of the above scenarios contributed to the landlord's loss of rent for April 2012, demonstrated by the landlord's continuing inability to re-rent these premises. While I accept that the tenant is partially responsible for the landlord's loss of rental income for this rental unit for April 2012 due to her late notice to end this tenancy, for the reasons outlined above, I limit the landlord's eligibility for a monetary award for loss of rent to \$276.31, one-third of the monthly rent for April 2012.

I allow the landlord to recover the filing fee for this application from the tenant. I allow the landlord to retain the tenant's security deposit plus applicable interest in order to partially satisfy the monetary award issued in this decision. No interest is payable.

### Conclusion

I issue a monetary Order in the landlord's favour under the following terms which allows the landlord to recover damage, loss of rent arising out of this tenancy and the filing fee for this application, and to retain the tenant's security deposit:

<b>Item</b>	<b>Amount</b>
Carpet Cleaning	\$84.00
Landlord's Award for Loss of Rent for April 2012 ( $1/3 \times \$829.00 = \$276.31$ )	276.31
Less Security Deposit	-397.50
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$12.81</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 11, 2012

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Residential Tenancy Branch