



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: MND, MNSD, FF  
Tenant: MNDC, MNSD, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution, with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and the tenant.

At the outset of the hearing I confirmed with the tenant that the other named applicant on her Application was her son who's name appeared on the tenancy agreement but that the agreement was not signed by him as such, I found that he is not a tenant and therefore not able to be party to this dispute. I amend the tenant's Application to exclude her son's name as an applicant.

The tenant had also applied to recover the filing for this Application but confirmed in the hearing that she did not pay a filing fee. I therefore amend the tenant's Application to exclude the matter of recovery of the filing fee for her Application.

During the hearing but after the majority of testimony was provided the tenant testified that she had not received the landlords' evidence, regarding their claim for damages to the rental unit. The landlord testified the evidence was served by placing it in the tenant's mailbox at her current residence. The tenant testified she did not receive it.

As we had concluded testimony but to accommodate the tenant's right to respond to the landlord's evidence I ordered the landlord to re-serve the tenant with the evidence they had originally served no later than Monday August 20, 2012 by registered mail and that the tenant must serve the landlord and the Residential Tenancy Branch with her written response or additional evidence no later than 4:00 p.m. on Wednesday August 29, 2012.

I advised both parties that I would not consider any additional evidence regarding the other matters raised in the tenant's claim including reimbursement for garbage fees; NSF fees; or loss of quiet enjoyment. I also advised the parties that depending on the nature of the tenant's written submission I may reconvene the hearing or I may write the decision based on the evidence and testimony presented today and the tenant's written submission, as long as I am satisfied that the landlord will not be prejudiced in doing so.

The tenant provided her response to the landlord's evidence on August 29, 2012. However, there was a substantial amount of evidence that was not relevant to the landlord's claim for damage to the rental unit and as such I have not considered those particular items. I have only considered the tenant's additional photographs; notes made on an invoice originally provided by the landlord's evidence; and the tenant's typewritten "Notes on Landlord pics".

Upon review of all of the relevant evidence I find that there is no need to reconvene the hearing as the tenant's responses, for the most part, had already been addressed in the landlord's documentary evidence or testimony.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit and for cleaning; 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).

The issues to be decided are whether the tenant is entitled to a monetary order for the loss of quiet enjoyment; the return of NSF fees; charges for garbage collection; and for all or part of the security deposit, pursuant to Sections 28, 38, 67, and 72 of the *Act*.

### Background and Evidence

The tenant provided a copy of a tenancy agreement signed by the parties on February 16, 2012 for a month to month tenancy with a monthly rent of \$1,340.00 due on the 1<sup>st</sup> of each month with a security deposit of \$650.00 paid. The landlords testified the tenant vacated the rental unit on June 2, 2012; the tenant did not dispute this statement.

The tenant testified that she was refused access to garbage removal services because the landlord did not have pick up service and was told to take her garbage to a local gas station. When the tenant did this she was told by gas station staff that she would be fined \$150.00 if she took garbage there again. The tenant states she then used a garbage drop off location where she was charged \$15.00 per week and seeks \$150.00 in compensation, the tenant did not provide receipts.

The tenant confirmed that garbage is not identified as a service under the tenancy agreement but that she had been told it was included prior to signing the agreement. The landlord testified that the community they live in provides weekly service to their home for 4 bins per week. The landlord testified the tenant was never denied access to this service.

The tenant also testified that the parties had agreed to end the tenancy at the end of April 2012 but when the tenant could not find new accommodation on such short notice the landlord agreed to allow her to stay if she paid \$100.00 for NSF fees for late

payment of rent in April and \$100.00 for NSF fees in addition to rent for the month of May 2012.

As background to this agreement the tenant submitted that she paid rent for the month of April and May 2012 in the following instalments:

- April 5, 2012 - \$700.00 – April rent
- April 18, 2012 - \$300.00 – April rent
- April 20, 2012 - \$200.00 – April rent
- April 24, 2012 - \$200.00 – includes balance of April rent a \$100.00 NSF charge
- April 24, 2012 - \$1,400.00 – May Rent.

The landlord testified she had been charged \$80.00 in NSF fees resulting from this tenancy and when the tenant offered this payment for April she accepted it. The landlord testified it was the tenant who offered an additional \$100.00 in rent if the landlord would agree to extend the tenancy by one month.

The tenant testified, in relation to her claim for loss of quiet enjoyment, that the landlord was constantly verbally assaulting her in regard to the non-payment of rent for the month of April. The tenant submits that she had to call the police to have the landlord “leave the area and stop screaming at me. the violence and harassment I have been through has been almost more than bearable.”

The tenant submits that it was the landlord’s fault that her rent was late because the landlord refused to contact the Ministry of Social Development (Ministry) on the tenant’s behalf. The tenant submits that the Ministry asserted the landlords did not own the rental unit and wanted to speak to the landlords to determine if the landlords had authority from their landlord to rent the unit to another party.

The landlord testified that, at the tenant’s request she attempted to call the Ministry 4 times but could never get through on their phone line and so she stopped calling the Ministry and refused to when she had made so many attempts.

The tenant also submits that the rental unit was not ready for occupation when she moved in; that she had to clean the unit thoroughly; that she was suppose to have access to laundry hook up; that the unit was supposed to be non-smoking and pet free but she had to clean dog hair and complete flea treatments.

For these reasons the tenant seeks compensation in the amount of \$650.00 for the loss of quiet enjoyment. The tenant has not provided documentary or corroborating evidence; receipts or police reports to support her testimony.

The landlord testified the tenant moved in two weeks prior to the start of the tenancy and as such the rental unit was not yet ready. The landlord testified that they had agreed to allow the tenant to move some of her belongings into rooms that were already finished but they thought this meant only a few items but the tenant completely filled

both rooms with her belongings and then a week later the tenant herself moved into the unit, unbeknownst to the landlord.

The landlord seeks compensation for damage and cleaning required after the tenant vacated the rental property in the amount of \$935.00 broken down as follows: \$560.00 for painting; \$225.00 for carpet cleaning; and \$150.00 for floor repairs.

The landlord has provided photographic evidence that show damage to the kitchen floor; staining on a carpeted area and substantial damage to walls and baseboards throughout the rental unit

The tenant submitted a copy of a move in Condition Inspection Report recording the condition of the rental unit at the start of the tenancy that does not indicate any problems with the walls or painting; that the living room has new paint; that the kitchen floor is new; and no other remarks regarding any flooring in the rest of the unit.

In the tenant's written response to the landlord's evidence the tenant submits that some of the landlord's photographs are extremely exaggerated, in particular pictures from where the bed frame was rubbing the wall but she does not explain how a photograph can be exaggerated. The tenant further submits that most of the landlord's pictures show damage to the walls that was painted over at the start of the tenancy.

The tenant also submits that she is not sure how damage occurred to the baseboards as they were not installed when she lived there. However, in the photographs the tenant submitted all baseboards are in place. The tenant states: "Stain on wall seeped thru paint. Was there on walk thru and seen when we moved in."

The tenant submits that damage to the floor in the kitchen was as a result of the landlord's installation of new fridge into the rental unit during the tenancy.

The tenant has also submitted the following handwritten notes on the landlord's invoice for repairs:

1. "Also 2 different address – when I called it was made clear they r friends"
2. "Spoke to this guy & said way more work was fixing all holes and dents – new drywall where needed, lots of puddy & sanding".

### 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.

When a party makes a claim against the other party in a tenancy and the verbal testimony is disputed the burden is on the party making the claim to provide sufficient evidence that will corroborate their claim.

In relation to the tenant's claim for compensation for garbage removal services not provided, I find the tenant has the landlord disputes the tenant's claim and the tenant has failed to provide any evidence that the landlord did not provide garbage services or even receipts for the costs she claims I find the tenant has failed to establish that she has suffered a loss as a result of a violation of the *Act*, regulation or tenancy agreement.

In regard to the tenant's claim for return of "NSF" fees for the late payment of rent. Since the tenancy was expected, by both parties, to end on April 30, 2012 and that as the tenancy had only been 1 month with the tenant paying rent for that first and only month in instalments that it would be unlikely for the landlord to just allow the tenant to stay an additional month for no other consideration.

As to the tenant's claims that it was the landlord's fault that she had to pay rent the way she did because the landlord would not contact the Ministry, I find that there is no obligation on the part of the landlord to help a tenant have their eligibility for income or disability assistance assessed. The *Act* only requires the landlord to provide the rental unit in exchange for rent and as such it is the tenant's obligation to ensure she has sufficient funds to pay the rent when it is due and in accordance with Section 26.

As such, based on the balance of probabilities, I find it unlikely that the landlord would enter into a new agreement to rent the unit to the tenants for an additional month without some additional compensation. Therefore, I find the parties entered into a new one month tenancy agreement that required the tenant to pay additional funds and that the landlord did not charge the tenant "NSF" fees. As such the tenant is not entitled to the return of these payments.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

The tenant claims that as a result of the landlord's lack of assistance in contacting the Ministry; the landlord's "harassment" of the tenant to collect rent; and the rental unit not being ready at the time of move in she should receive \$650.00 for the loss of quiet enjoyment.

As noted above, the landlord had no obligation to contact the Ministry and as such I find there is no violation of the *Act*, regulation or tenancy agreement on the landlord's part.

I find it reasonable that a landlord, who has entered into a tenancy agreement with a tenant after that tenant has moved in to the rental unit and has failed to pay rent or come anywhere close to paying the full amount of rent until the fourth week in the month, would likely to be contacting the tenant on a frequent basis to demand payment.

I find that it was the actions of the tenant (failure to pay rent) that led to the need for the landlord to be in contact with the tenant at all. As such, I find the tenant cannot now rely on her breach of the contract to claim a loss of quiet enjoyment. For these reasons, I find the tenant has failed to establish a loss of quiet enjoyment.

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 Condition Inspection Report, submitted into evidence by the tenant, records the condition of the rental unit at the start of the tenancy. As such, I find the tenant agreed that the walls had been painted and by the absence of any comments on the Report that there were no marks or stains showing through; she cannot now claim that the walls were marked up or stained at the start of the tenancy.

In relation to the tenant's claim that the landlord damaged the kitchen floor, I again note the Condition Inspection Report notes the floor was new and the photographic evidence of both parties confirms at the end of the tenancy the floor was damaged. The tenant has provided no corroborating evidence to establish the landlord caused the damage and as such I find the damage occurred as a result of the tenancy.

As to carpet cleaning, I accept the tenant may have cleaned the carpet before moving out but by her own testimony and submission she spilled a plant on the carpet when moving and made no effort to have the carpet or at least that area of the carpet re-cleaned. As such I find the landlord is entitled to charges for carpet cleaning.

### Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety without leave to reapply.

I also find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$985.00** comprised of \$560.00 painting; \$150.00 floor repairs; \$225.00 carpet cleaning and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$650.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$335.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord 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: August 30, 2012.

---

Residential Tenancy Branch