



# 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 was convened by way of conference call in response to an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of this application.

The landlord and one of the tenants attended the conference call hearing and both gave affirmed testimony. The other named tenant did not attend, and the landlord stated that he had been served by delivering the Landlord's Application for Dispute Resolution and notice of hearing to the home of his parents, as per his instructions. The *Residential Tenancy Act* does not support that method of service, and I find that the male tenant has not been served in accordance with the *Act*. The female tenant was served personally on June 30, 2012, and I find that she has been served in accordance with the *Act*. The hearing proceeded in the absence of the male tenant.

The landlord also provided evidence in advance of the hearing, including numerous photographs, to the Residential Tenancy Branch and to the tenant. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

This fixed term tenancy began on October 1, 2011 and was to expire on August 31, 2012, although the tenancy actually ended on June 30, 2012. Rent in the amount of \$1,650.00 per month was payable in advance on the 1<sup>st</sup> day of each month. The landlord testified that the rental unit had been advertised for \$1,750.00 per month but was reduced to \$1,650.00 in exchange for the tenants' care of the yard and gardens. The tenancy agreement, a copy of which was provided for this hearing states that: "Rent has been reduced by \$100/month in consideration of tenant maintaining yard and mowing lawn areas." The agreement is silent on what would happen if the tenants did not maintain the yard or lawn areas, however, the landlord claims \$100.00 per month for 11 months for the tenants' neglect of the yard.

At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$825.00 and also collected a pet damage deposit in the amount of \$500.00 which the tenants paid in instalments during the course of the tenancy. The landlord testified that the tenants had 2 dogs but added 3 cats and a bird during the tenancy without the landlord's knowledge or permission. The deposits are still held in trust by the landlord.

The landlord further testified that the tenants' rent cheque for June, 2012 was returned by the financial institution for insufficient funds. The landlord was charged \$7.00 by her financial institution for the returned item and the landlord has provided evidence of that returned cheque and the fee charged.

On June 8, 2012 the tenants told the landlord they would be moving on June 30, 2012 but no written notice was provided. One of the tenants departed earlier.

On June 8, 2012 the landlord advertised the rental unit on Used Cowichan and Used Victoria, and also advertised on Craigslist but the landlord does not recall the date the latter advertisement was placed. All advertisements are on-line websites, and the landlord testified that that method has been proven to be successful in the past. The rental unit was re-rented for August 1, 2012. No evidence of any advertisements has been provided.

The tenancy agreement states that utilities are not included with the rent. The landlord testified that a bill for the pump and well was shared with other residents, and the tenants' share was \$5.00 per month. An invoice in the amount of \$45.00 was taped to the door of the rental unit on June 10, 2012, being the amount due at that point from the tenants, and the tenants have not paid the landlord any portion.

A move-in condition inspection report had been completed by the parties at the commencement of the tenancy, and the same form was used for a move-out condition inspection report at the end of the tenancy. The landlord provided a copy of the completed form which shows that it was completed on September 29, 2011 at the commencement of the tenancy and is dated June 30, 2012 for the end of the tenancy. The landlord testified that the form on the Residential Tenancy Branch website did not have enough space for all rooms within the rental unit, and the form was adjusted by the landlord so as to include all rooms. The markings in dark ink are at move-in and the markings in light colored ink are at move-out. The report does not contain any signatures of the landlord or either of the tenants at move-in or at move-out. The document has a checkmark in the statement that says, "I do not agree that this report fairly represents the condition of the rental unit for the following reasons:" and handwriting says, "ample time to clean was not given. I offered to stay and clean and was refused." Those markings are on the move-in portion of the form, however are in light colored ink, which the landlord testified was actually at move-out, not at move-in. The landlord testified that June 30, 2012 was arranged by the parties for the move-out condition inspection, and the landlord had also arranged to show the rental unit to a new perspective renter on the same date.

The landlord claims \$100.58 for a window in the greenhouse that was broken during the tenancy, and provided a copy of a receipt to substantiate that amount. The condition inspection report shows that the window was broken at the end of the tenancy.

The landlord further testified that the new tenants were in the rental unit on July 27, 2012 who had a small child and a young baby. The young child attracted fleas all over her legs from being inside the rental unit. The landlord claims \$224.00 for pest control, and has provided a copy of an invoice which states that the rental unit was treated for fleas.

The landlord also testified that a student was hired for \$160.00 to pressure wash the deck of the rental unit which was left by the tenants in a soiled state and not cleaned at all by the tenants prior to their departure. No receipt for that service has been provided, however the landlord has provided numerous photographs to illustrate the state of the rental unit on June 30, 2012. The photographs show that the rental unit is in need of cleaning, and also show food and dishes remaining in the cupboards.

The landlord further testified that some garden tools, including a hose and rake were removed from the property by the tenants, and the landlord has provided receipts in the amount of \$28.66 for replacement of the rake and \$49.26 for replacing the garden hose, and requests a monetary order for recovery of those items. The items are not contained in the move-in or move-out portions of the inspection report.

The landlord also testified that it took the landlord 24 hours to clean the interior of the rental unit, and the landlord claims \$600.00 from the tenants for cleaning at \$25.00 per hour. The tenants had cleaned the carpets, but that's all.

The tenant operates a salon in the community, and the landlord agrees that the tenant is owed \$134.40 from the landlord for salon services provided, and has provided an invoice showing that amount is owed to the tenant. The landlord agrees that that amount should be deducted from any monetary amount awarded to the landlord for unpaid rent and damages.

The tenants did not give the landlord a forwarding address in writing.

During cross examination, the landlord also testified that one of the tenants had moved from the rental unit prior, and the landlord told the remaining tenant that if she had financial difficulties to let the landlord know. The landlord was not told that the tenant had any financial difficulties, and led the landlord to believe that there were no financial problems because the tenant advised that she would be going to school in Las Angeles at a cost of about \$10,000.00.

The landlord provided a monetary order request document, as well as another document dated June 28, 2012 with the Application for Dispute Resolution wherein the landlord claims \$6,900.00. One document claims \$1,000.00 as reimbursement for the discount given to the tenants of \$100.00 per month in exchange for yard maintenance that was not completed by the tenants and the other claims \$1,100.00 for 11 months. The application also contains a claim in the amount of \$4,950.00 for unpaid rent for June and July, 2012 and loss of revenue for August, 2012. The landlord further claims \$7.00 for the N.S.F. fee for June's returned cheque; \$45.00 for unpaid utilities; \$100.58 for the broken greenhouse window; \$224.00 for pest control; \$160.00 for pressure washing the deck; \$28.66 for replacing a missing rake; \$49.26 for replacing a missing garden hose; \$600.00 for cleaning the rental unit after the tenants had vacated; and \$100.00 for recovery of the filing fee for the cost of this application; less \$1,325.00 in deposits held by the landlord and less \$134.40 for the Salon Service owed to the tenant.

The tenant testified that when the landlord attended the rental unit on June 30, 2012, the landlord told the tenant to put the broom down and get out. The tenant told the landlord that she didn't want to leave without finishing cleaning, but the landlord responded that the tenant was supposed to be done before then.

The tenant further testified that the landlord told the tenant after the first tenant moved out that if she had financial problems to let the landlord know.

The tenant further testified that the rake and hose were not taken by the tenant, and a landscaper had been at the rental unit and the landlord told that person to leave as well.

With respect to the landlord's claim of a flea infestation in the rental unit, the tenant testified that she lived in her camper all summer and the house remained empty for a month. The tenant denies that any infestation was caused during the tenancy.

### Analysis

The *Residential Tenancy Act* states that at the end of a tenancy, the parties must complete a move-out condition inspection report, and the tenancy ends at 1:00 p.m. on the last day of the tenancy unless the parties agree otherwise. In this case, the last day of the tenancy was June 30, 2012. The landlord testified that the move-out condition inspection was arranged for that date, and the tenant did not dispute that testimony. Therefore, I find that the tenancy was to end on June 30, 2012 at 1:00 p.m. and that the tenant had an obligation to move out and have the unit ready for inspection by the parties by 1:00 p.m.

The *Act* requires a tenant to leave a rental unit reasonably clean and undamaged except for normal wear and tear. I have reviewed the photographs provided by the landlord and I find that the rental unit was not reasonably clean at the end of the tenancy. I further find that the landlord's claim for cleaning in the amount of \$600.00 is a reasonable amount, being \$25.00 per hour. The landlord has failed, however, to prove the \$160.00 fee for pressure washing the deck, and I find that the cleaning costs ought to include pressure washing.

I further find that the tenant was responsible for replacement of the glass pane in the greenhouse, and I find that the landlord has established a claim in the amount of \$100.58.

I further find that the landlord is owed \$3,300.00 for rent for the months of June and July, 2012 in addition to the \$7.00 fee charged by the landlord's financial institution for the tenant's returned cheque in June. The tenant has not disputed that the landlord was not given a month's notice as required under the *Act*, and the tenant has not yet covered the rent for the month of June. There is no dispute that the tenancy was for a fixed term to expire on August 31, 2012. The *Residential Tenancy Act* requires a party who makes a claim against another party to do whatever is reasonable to minimize the damage or loss. In this case, the landlord testified to placing advertisements on free websites, but did not provide any evidence to substantiate that testimony. Therefore, I decline to order that the tenant pay the landlord for loss of revenue for the month of August, 2012.

With respect to the landlord's claim for reimbursement of the rent reduction for yard work not undertaken by the tenants, the tenancy agreement states that the landlord reduced rent for that service to be provided for the tenants, but there is no consequence for the tenants' failure to do so. Further, there is no evidence before me of what exactly the parties agreed for that maintenance. Therefore, the landlord's application for \$1,100.00 cannot succeed.

I have reviewed the tenancy agreement which clearly shows that utilities are not included in the rent. The landlord testified to leaving a copy of the invoice for the water pump in the amount of \$45.00 with the tenant. The tenant has not disputed that testimony, and I find that the landlord has established a claim for that amount.

With respect to the missing rake and hose, I find that the landlord has failed to establish that those items were at the rental unit at the commencement of the tenancy or during the tenancy, or that the tenants are responsible for those amounts, and therefore, the landlord's application for those items must be dismissed.

With respect to the landlord's claim for pest control, I accept the testimony of the tenant that the rental unit had been vacant for a month before the landlord noticed any pests, and the tenant did not have access to the rental unit after June 30, 2012. I find that the landlord has failed to establish that the infestation was caused by the tenant and I dismiss that portion of the landlord's claim.

In summary, I find that the landlord has established the following claims:

- \$1,650.00 for June's rent;
- \$1,650.00 for July's rent;
- \$7.00 for the fee charged to the landlord by the financial institution for the returned cheque;
- \$45.00 for utilities;
- \$100.58 for the broken greenhouse window; and
- \$600.00 for cleaning the rental unit

for a total of \$4,052.58. The landlord agrees that the sum of \$134.40 is owed to the tenant, and although salon fees are not recoverable by the tenant in a Residential Tenancy dispute, the parties agree that the amount ought to be deducted from the amount owed to the landlord.

The landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application, and I order the landlord to keep the security deposit in the amount of

\$825.00 and the pet damage deposit of \$500.00 in partial satisfaction of the claim. I hereby order the tenant to pay to the landlord the difference in the amount of \$2,693.18.

Since the other tenant has not been properly served with the Landlord's Application for Dispute Resolution and notice of hearing documents, I dismiss the claim as against the male tenant.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favor of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,693.18.

This order is final and binding on the parties and may be enforced.

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: September 14, 2012.

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Residential Tenancy Branch