



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR MNSD MNDC FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for unpaid rent, authority to retain the tenants' security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for recovery of the filing fee.

The tenants and an agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenants confirmed that they received the evidence package from the landlord and had the opportunity to review the evidence prior to the hearing. I find the tenants were served in accordance with the *Act*. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

The agent requested to reduce the landlord's monetary claim by \$382.00 as the landlord was able to minimize their loss of the full July 2012 rent by securing new tenants who moved into the rental unit on July 24, 2012. The new tenants paid the landlord \$382.00 for the dates of July 24, 2012 to July 31, 2012 inclusive. As a result of the above, the landlord's monetary claim is reduced from \$1,750.00 to \$1,368.00, consisting of \$1,118.00 for rent owed between July 1, 2012 to July 23, 2012 inclusive, and \$250.00 for an agent re-rental fee.

### Issues to be Decided

- Should the landlord be granted a monetary order for unpaid rent, or money owed or compensation for damage or loss?
- Should the landlord be granted authority to retain all or part of the security deposit?

### Background and Evidence

The landlord submitted a copy of the fixed term tenancy agreement as evidence. The tenancy began on October 15, 2011 and was to expire on April 30, 2013. The agreement indicates rent was due on the first day of each month in the amount of \$1,500.00. The tenants paid a security deposit of \$750.00 at the start of the tenancy.

In an e-mail submitted as evidence dated May 28, 2012 at 10:32 p.m., the tenants write to the landlord:

“hi David, this is a email to inform you that we will be wanting to break our lease at the end of June 2012. We have been happy with our stay but we are moving into a place out by...that we are able to buy in a couple of years and must jump on this opportunity for July 1<sup>st</sup>.”

[reproduced as written]

In a subsequent e-mail sent June 12, 2012, the tenants state that they have not seen the rental unit being advertised for rent, and that the tenants have been looking for renters for the rental unit. The tenants stated in their e-mail that those who have viewed the rental unit could not live inside due to the rental unit being so dated. The e-mail describes comments from those who viewed the rental unit as “disgusting”, “carpets stained and incomplete in areas”, “light fixtures are hideous”, and the “carpets are gross” which were all things the tenants confirmed they knew when moving into the rental unit, according to the e-mail.

The tenants allege, however, there is “black mold in the windows upstairs and in the sliding doors” and other issues. The tenants state in the e-mail:

“...this house is not a desirable place to inhabit due to the condition of the inside. I do not feel comfortable housing my 9 week old child in this house after these discoveries. We have re-carpeted the down stairs room, the bedroom upstairs (not the master), and painted down stairs, the kitchen, and the upstairs bedroom to try and make this place seem clean and now with these recent discoveries I will not continue to house my family here. I’m hoping that we could come to an

agreement that is along these lines, we pay you 1500.00 as liquidated damages and end our lease for June 31...”

The tenants agreed during the hearing that they did not submit their own evidence in response to the landlord’s application. The tenants referred to a report from an Environmental Engineer, however, they did not provide a copy of such a report in evidence. The tenants stated that it is the responsibility of the landlord to produce the report as the report would cost the tenants \$1,100.00 for a copy.

The tenants submitted a written letter to the landlord dated June 18, 2012, which states that they need to move out due to alleged mold issues and alleges that the landlord was advised on June 12, 2012 with no action taken or proposed. The tenants allege in the June 18, 2012 letter that their son exhibited an adverse reaction to the mold and took him to the doctor, however, they did not provide evidence to corroborate this. The tenants vacated the rental unit on June 25, 2012.

The agent responded to the tenants’ claim of alleged mold by stating that the rental unit has single pane windows that require condensation to be wiped down. The agent stated that wiping windows down when there is condensation is a basic part of housekeeping. The tenants stated they did not know what type of windows were in the rental unit before moving in. The tenants did not provide any photos, witness statements, or other corroborating evidence to support their claim of mold.

The agent was asked about the \$250.00 fee being claimed. The agent stated that it is a standard fee charged to re-rent the unit when a fixed term tenancy is broken. Both parties agreed that section 5 of the residential tenancy agreement, which covers liquidated damages, was left blank and, therefore, did not specify a pre-determined amount to re-rent the unit if the tenant ends the fixed term tenancy.

### Analysis

Based on the documentary evidence, the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Re-rental fee claim** – As the landlord failed to fill out section 5 of their tenancy agreement, **I dismiss** the landlord’s claim for \$250.00 for liquidated damages without leave to reapply. If the landlord expects to claim for such a fee, the landlord must ensure that the amount is agreed to by both parties at the start of the tenancy.

A fixed term tenancy can only end at the end of tenancy agreement, if the Director orders that the tenancy is ended, by mutual agreement in writing between the landlord and tenants, or in accordance with section 45 (3) of the *Act*.

**Tenant's notice of breach of material term** – The tenants sent an e-mail to the landlord on June 12, 2012, 15 days after stating they were “happy with their stay”, claiming that there is a mold problem. The tenants wrote to the landlord on June 18, 2012, and vacated the rental unit 7 days later on June 25, 2012.

Section 45(3) of the *Act* states:

**Tenant's notice**

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service 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.

[emphasis added]

Whether I accept the e-mail dated June 12, 2012 or the tenants' letter dated June 18, 2012, as the first written notice to the landlord of an alleged breach of a material term of the tenancy agreement is moot. **I find** that either date would not have provided a reasonable opportunity for the landlord to respond or correct the alleged material breach as required under section 45(3) of the *Act*. Therefore, **I find** the tenants breached the fixed term tenancy and did not end the fixed term tenancy in accordance with the *Act*.

I make no findings regarding the allegations from the tenants regarding mold in the rental unit as they did not file an application for dispute resolution and the *Act* does not permit the tenants to make a claim through the landlord's application for dispute resolution.

**Efforts by landlord to secure a new tenant and minimize loss** – The agent was successful in securing new tenants who moved into the rental unit on July 24, 2012.

Section 7 of the *Act*, states:

**Liability for not complying with this Act or a tenancy agreement**

**7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Given the above, **I find** that by re-renting the rental unit on July 24, 2012, the landlord minimized the loss to both parties, as required by section 7 of the *Act*.

**Claim for loss of rent** – Due to the tenants' breach of the fixed term tenancy, **I find** the landlord suffered a loss of rent for July 1, 2012 to July 23, 2012 inclusive, in the amount of **\$1,118.00**. Therefore, **I find** the landlord has met the burden of proof and established a monetary claim of **\$1,118.00**.

As the landlord's application had merit, **I grant** the landlord recovery of the filing fee in the amount of **\$50.00**.

The tenants' security deposit of \$750.00 has accrued no interest since the start of the tenancy. The landlord continues to hold the security deposit.

**Monetary Order** – **I find** the landlord as established a total monetary claim of **\$1,168.00** and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit. **I authorize** the landlord to retain the tenants' full security deposit of \$750.00 in partial satisfaction of the monetary claim and **I grant** the landlord a monetary order for the balance owing in the amount of **\$418.00**.

### Conclusion

I find that the landlord has established a total monetary claim of **\$1,168.00**. I authorize the landlord to retain the full security deposit of \$750.00 in partial satisfaction of the claim. I grant the landlord a monetary order under section 67 for the balance due of **\$418.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 28, 2012

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Residential Tenancy Branch