



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlords application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenants, the landlord's agent and a witness for the landlord attended the conference call hearing. The parties attending gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the landlord was permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are 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?
- Is the landlord entitled to keep the tenants security deposit?

### Background and Evidence

The parties agree that this tenancy started on November 1, 2010. This was a fixed term tenancy for two years and was due to expire on October 31, 2012. The parties agree that the rent for this unit was \$1,400.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$700.00 on October 08, 2010.

The landlord's agent testifies that both parties attended a move in condition inspection of the rental unit however at the end of the tenancy the tenants informed an agent for the landlord that they did not want to attend a move out inspection so the inspection was done in the tenant's absence (testimony from the landlord's witness). The landlord's agent testifies that the tenants provided a forwarding address over the telephone on July 13, 2012.

The landlord's agent testifies that the tenants verbally told the landlords that they were going to vacate the rental unit but did not give written notice to do so until July 3, 2012. This notice has an effective date of July 31, 2012. The landlord's agent testifies that the tenants did not pay rent for July or August and the unit remained vacant until September 01, 2012. The landlord's agent states that they seek to amend their application to reduce their claim for unpaid rent or loss of rental income for September and October 2012. The landlord's agent testifies that the tenants owe \$2,800.00 in unpaid rent or loss of rental income. The landlord's agent has provided documentary evidence showing the unit was advertised for rent in different forums after written notice to end the tenancy was received by the landlord.

The landlord's agent testifies that the tenants told the landlord's agent that they could not deal with the mice or construction issues in and around the rental unit. The landlord's agent testifies that she has received nothing in writing from the tenants about either of these issues. The landlord's agent agrees that in February 2011 the landlord did send a pest control company to the tenants unit to deal with mice issues that they

were having at that time. The landlord's agent testifies that since that time they've heard nothing else about mice problems from the tenants.

The landlord's agent testifies that the tenancy agreement has a clause in the addendum that notifies the tenants that a fee of \$300.00 will be charged if the tenants break the terms of the fixed term lease. As the tenants moved out before the end of the fixed time the landlord seeks to recover this sum from the tenants for the cost of re-renting the rental unit.

The landlord testifies that the end of the tenancy the tenants failed to remove garbage from the rental unit, the tenants failed to clean the rental unit or the carpets and the tenants left some damage in the rental unit. The landlord has provided a copy off the move in and a move out condition inspection report which details the cleaning, the garbage, and the damage to the rental unit. The landlord has also provided photographic evidence and receipts. The landlord seeks to recover the sums off:

\$272.04 to remove the garbage from the rental unit;

\$422.00 to clean the rental unit;

\$224.00 to clean the carpets which were left heavily stained;

\$797.79 to rectify the damage to the rental unit.

The landlord testifies that the tenants left a number of large holes in the wall where they had fitted their flat screen television. There was also damage to the walls from some wall decals that the tenants had put up. When these decals were removed from the walls some of the paint peeled off the wall and had to be redone. The landlord testifies that a smoke detector was missing from the rental unit and the laundry room door had a large hole left in it. The landlord testifies that the tenants are responsible to ensure the filter on the furnace is clean when they moved out however this filter was found to be extremely dirty. The tenants also failed to remove a number of Christmas lights that were left at the rental unit these lights were held on the staples and had to be removed.

The landlord's agent testifies that the tenants did return some keys to the rental unit however these keys would not work and the landlord had to get a locksmith to go to the rental unit to pick the lock and then rekey the locks. The landlord seeks to recover the sum of \$190.40 for this which includes the locksmith's travel time. The landlord's agent also seeks to recover the sum of \$77.00 for the time taken for the caretaker and the landlords witness to go twice to the rental unit because they could not get into the unit the first time because the keys provided by the tenants would not fit.

The landlord's agent states that they have amended their claim and have withdrawn the sum of \$700.00 to repair a mantel on the fireplace and the landlord has withdrawn their claim for the late fee charged.

The landlord seeks to retain the tenant's security deposit of \$700.00 in partial satisfaction of this claim and to recover the \$100.00 filing fee paid for this application.

The tenants dispute the landlords claim for unpaid rent. The tenants testify that they understand that they did give the landlord late notice to move out of the rental unit but state they moved out on June 30, 2012. The tenants testify that they were forced to end the tenancy because they continued to have a problem with mice. The tenants testify that the landlords were aware there were mice because the pest control company would have continued to invoice the landlord for the work each time they came to the tenants unit. The landlords would also have been aware because other units in the area belonging to the landlord have mice problems and the landlords could not rent these units out. The tenant testifies that they have a young child and his wife was pregnant. They found mice feces in the cutlery drawer and in their child's toys. The tenant testifies that they followed through with the pest control company after their initial visit in February 2011. The tenant testifies that they purchased additional mice repellent devices but they continued to have mice.

The tenants agree that they did not contact the landlord about the mice problem until they gave the landlord notice to end the tenancy when they decided they could no

longer deal with this problem as it was unsanitary living in the rental unit. The tenant testifies that the landlords have documented that they found feces and dead mice after the tenants had moved out. The tenants testify that they therefore dispute the landlords claim for loss of rental income for July and August. The tenants also dispute the landlords claim for the \$300.00 fee to re-rent the unit.

The tenants testify that they did leave some garbage at the rental unit however the landlord's photographs are misleading as to the amounts left behind as many of the photographs are taken of the same garbage. The tenants do not dispute that they did not clean the unit or that they failed to clean the carpets. The tenant believed that the landlord would just deduct the amount of a cleaning and carpet cleaning from the security deposit. The tenants agree the landlord may keep the security deposit for the cleaning and the carpet cleaning and to remove garbage from the rental unit. The tenants request that the balance of the security deposit is returned to the tenants.

The tenants dispute the landlords claim for damage. The tenants testify that the stickers on the walls are removable wall decals are not supposed to damage the paint. The tenants testify that the landlord has not provided any photographic evidence showing damage to the walls from these decals.

The tenant agrees they did mount the television on the wall and did not fill these holes when they moved out. The tenant testifies that this is the only spot for the television to be mounted as the connections are there. The tenant testifies that two weeks before they moved out the door to the laundry room came away from it screws. The tenant testifies that the screws are too small to hold the hinges in. When the door came off the hinges it hit a railing and cracked a hole the door. The tenants testify that the landlord's home warranty should cover this damage the same as the other damage the landlord has put on their claim as to the toilet roll mount and a sink ring. The tenants dispute that this damage was caused by their actions or negligence.

The tenants do not dispute that they did not leave the filter clean at the rental unit. The tenants do dispute the amount charged by the landlord to remove the Christmas lights. The tenants testify that these lights were held on with small staples and tape.

The tenants dispute the landlords claim for a locksmith and the landlords claim for the caretaker and the landlords witness to go twice to the rental unit. The tenants testify they had returned the keys to the rental unit and if the landlord had misplaced the keys or mixed them up then it is the landlord's fault that they could not get into the unit. The tenant testifies that they had to replace the keys as there had been a break-in in a number of other units and they were advised to change the keys. If the landlord sent a locksmith to the rental units with a copy of the landlord's keys and not the keys the tenants returned then this is the landlord's responsibility as the landlord has been informed of the key change.

The tenants testify that they had to remove the smoke detector because it kept going off. The tenants testify they called the landlord and they came to look at the detector. The tenants testify they left the smoke detector in the kitchen at the end of the tenancy.

The landlord testifies that when the unit is rekeyed it is possible that the landlords have not been given copies of the keys at that time and the landlord used their copies to access the house. The landlord testifies that she could have missed seeing the smoke detector at the rental unit at the end of the tenancy and the landlord removes this portion from the claim.

The landlord testifies that they were only billed for the pest control to this rental unit in February 2011. The landlord testifies that she has checked all other accounts and no other charges have been applied from the pest control company. If the pest control company went back to the rental unit it could have been just a follow-up visit and the landlord has not been charged for this. The landlord testifies that they would have no way of knowing the problem with mice was continuing unless the tenants had informed them.

The parties decline the opportunity to cross examine the other party on their evidence or testimony.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for unpaid rent or loss of rental income; I refer the parties to section 45(2) of the *Residential Tenancy Act* [Act] which states:

*(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

Section 45(3) of the Act states:

*(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.*

The tenants argue they had to end the tenancy early due to problems with mice however they agree they did not inform the landlord of this problem after the initial pest

control visit in February, 2011. The landlord argues that they could not have known the tenants continued to have problems with mice if the tenants did not inform them. Consequently, it is my decision the landlords did not fail to comply with the tenancy agreement or *Act* in relation to mice problems as this was a continuing problem the tenants had not made the landlords aware of. Therefore the tenants were not entitled to end the tenancy before the end of the fixed term and the landlord is therefore entitled to recover rent up to the time the unit was re-rented. Subsequently the landlord is entitled to recover unpaid rent or **\$2,800.00** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for the sum of \$300.00 for fees due because the tenants ended the tenancy before the end of the fixed term; a landlord is entitled to charge a tenant fees of this nature as liquidated damages and not as a penalty as long as the fees are responsible and there is a clause mentioning these fees in the tenancy agreement. As the landlord has shown that this clause is in the tenancy agreement I am satisfied that the tenants would be aware that the landlord could charge the tenants the sum of \$300.00. I am also satisfied that this is a reasonable charge to deal with costs to re-rent the unit. Subsequently I find the landlord is entitled to recover the sum of **\$300.00** from the tenants pursuant to s. 67 of the *Act*.

With regard to the landlords claim for cleaning, garbage removal and carpet cleaning; the tenants have not disputed these costs and have agreed during the hearing that the landlords may retain their security deposit to cover these costs. As these items come to a total sum of **\$918.04** and the security deposit is \$700.00 the landlord is entitled to a monetary award for the difference of \$218.04 pursuant to s. 67 of the *Act*.

With regard to the landlords claim for damages, I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;



- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Having considered the documentary evidence and verbal testimony it is my decision that the landlord has met the first part of the claim and has shown that the tenants are responsible for damage to the rental unit. The move out condition inspection report details some of the damage and the landlord's photographic evidence details the damage in more depth. Under s. 32(2) of the *Act* a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. Under s. 32(3) of the *Act* a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Consequently, I am satisfied that the landlord has shown that this damage was caused by the actions or neglect of the tenants and it was not rectified at the end of the tenancy. I am also satisfied that the landlord has provided sufficient evidence to show the actual costs to rectify the damage and I am satisfied that the landlord has withdrawn some aspects of their claim for which they had insufficient evidence such as the mantel and

smoke detector. Consequently, I limit the landlords claim to the sum of **\$737.79** after deducting \$60.00 charged to replace the smoke detector.

With regard to the landlords claim for costs associated with fees for the locksmith, and the landlords caretakers time to attend the unit twice; I am not satisfied that the landlord has meet the burden of proof in this matter as the landlord's agent agrees they could have taken a different set of keys to the unit and not the keys the tenants returned. Consequently, this section of the landlords claim is dismissed without leave to reapply.

As the landlord has been largely successful with this amended claim I find the landlord is entitled to recover the **\$100.00** filing fee pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following sum:

Unpaid rent	\$2,800.00
Lease break fee	\$300.00
Cleaning, garbage removal and carpet cleaning	\$918.04
damages	\$737.79
Filing fee	\$100.00
Subtotal	\$4,855.83
Less security deposit	(\$700.00)
Total amount due to the landlord	\$4,155.83

#### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,155.83**. The order must be served on the respondents and is enforceable through the Provincial Court 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: October 15, 2012.

---

Residential Tenancy Branch