



# 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 dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all of the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the Act, sent via registered mail on August 24, 2012. Canada Post receipt numbers were provided in the Landlord's verbal testimony.

Based on the submissions of the Landlord, and the fact that evidence was received on file from the Tenants' trustee, I find that each Tenant was sufficiently served notice of this proceeding, in accordance with the Act. Therefore, I proceeded with the hearing in the absence of the Tenants.

Upon review of the Landlord's application for dispute resolution the Landlord confirmed that she wrote the amount of the security deposit (\$650.00) in the square box of the application and indicated in the details of the dispute "Please see attached document" which outlined the amounts being claimed. The Landlord affirmed that each Tenant was served copies of the document with the details of her claim with her application in the registered mail package. Based on the foregoing I find each Tenant was sufficiently informed of the claim being brought against them.

### Issue(s) to be Decided

1. Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The Landlord submitted evidence in support of her claim which included, among other things, copies of: the tenancy agreement and four page addendum, photos of the rental unit taken April 1, 2012, receipts for work performed on the unit, text messages between the Landlord and Tenants, and the Landlord's statement of claim.

The Landlord advised the Tenants entered into a fixed term tenancy agreement that began on September 1, 2011 which was scheduled to switch to a month to month tenancy after September 1, 2012. Rent was payable on the first of each month in the amount of \$1,290.00 and on August 15, 2011 the Tenants paid \$650.00 as the security deposit. The Tenants did not provide the Landlord with their forwarding address.

The Landlord submitted that the Tenants contacted her on March 1, 2012 and told her verbally that they were going to be moving out of the rental unit either April 1<sup>st</sup> or May 1<sup>st</sup>, 2012 so she began advertising the unit for rent. She began showing the unit and found a tenant who wanted to take the unit on April 1, 2012 and when she informed the Tenants of this, through text message, they responded by telling her that they were not going to move out until May 1, 2012. The Landlord stated she told her prospective tenant this and began advertising the unit again for May 1, 2012. Then on March 8, 2012 the Tenants sent her a text saying they changed their mind again and were going to move out on April 1, 2012. The Tenants vacated the unit on March 25, 2012, without cleaning it, and declined to attend a move out inspection.

The Landlord argued that she was not able to re-rent the unit until May 1, 2012 and has suffered a loss of rent for April 2012 because the Tenants failed to provide her with proper notice. The Tenants provided her with a cheque for April 1, 2012 rent, however, a stop payment was placed on it and it was returned by the bank. The Landlord was charged \$7.00 in bank fees for the returned item. In addition, the Landlord is claiming liquidated damages as provided in the tenancy addendum, because the Tenants broke their fixed term lease.

The Landlord referenced her photos provided in evidence to support her claim for having to clean the rental unit at the end of the tenancy. She also noted that the Tenants took the shower curtain hooks and that they threw out the keys and had non-standard Mickey Mouse keys made for the unit which were very large and could not be given out to her new tenants. She pointed to her evidence which included a text message from the Tenants confirming they threw out the keys. As a result she had to have new standard size keys cut for the rental unit.

The Landlord is seeking \$1,896.27 in damages as follows:

\$250.00	Liquidated Damages
\$ 167.99	Sears Carpet Cleaning as per the invoice provided in evidence
159.60	Cleaning of the rental unit as per the invoice provided in evidence
21.68	Cost to purchase new keys and shower curtain hooks
1,290.00	Loss of rent for April 1, 2012
7.00	Bank fees as supported by the bank receipt provided in her evidence

The Landlord advised that she wished to offset her claim against the Tenants' security deposit and less \$100.00 which she agreed to pay the Tenants for the purchase of a leaf blower and shelving unit.

### Analysis

Evidence was received from the Tenants' bankruptcy trustee who submitted a letter stating the Landlord's name was omitted from the creditors list in the Tenants' bankruptcy. Accordingly, there is no evidence to support that the matters before me are significantly linked to a matter that is currently before the Supreme Court. Therefore, I accepted jurisdiction to determine this dispute pursuant to section 58(2) of the *Residential Tenancy Act*.

Upon consideration of the undisputed evidence before me I accept the version of events as discussed by the Landlord and corroborated by her documentary evidence.

Section 45 of the Act provides that a tenant may end a fixed term tenancy agreement by providing the landlord with written notice to end the tenancy on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

In this case the Tenants could not end this tenancy, in accordance with the Act, on a date prior to September 1, 2012. Accordingly, I find the Tenants ended the tenancy in breach of the Act, on March 25, 2012, when they vacated the unit.

The Tenants' tenancy agreement addendum provided for liquidated damages of \$250.00. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. In this case I accept the Landlord's testimony that this amount is reasonable as she has had to devote time to advertise, show the unit as often as possible, and to conduct checks on potential customers. Therefore, I award the Landlord liquidated damages of **\$250.00**.

I find the manner in which the Tenants ended the tenancy of switching back and forth between April 1<sup>st</sup> and May 1<sup>st</sup>, and then placing a stop payment on their April 1, 2012 cheque, caused the Landlord to suffer a loss of April 2012 rent and bank charges; even though the Landlord took reasonable steps to mitigate her loss. Accordingly, I award the Landlord loss of rent for April 2012 plus bank charges in the amount of **\$1,297.00** (\$1,290.00 + \$7.00).

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenants have breached section 37(2) of the Act, leaving the rental unit unclean and with some damage (keys and shower curtain hooks missing) at the end of the tenancy. As per the foregoing I find the Landlord has met the burden of proof and I award them damages in the amount of **\$349.27** (\$167.99 + 159.60 + 21.68).

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Liquidated Damages	\$ 250.00
Loss of April 2012 rent + Bank charges	1,297.00
Damages (cleaning & repairs)	349.27
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$1,946.27</b>
<b>LESS:</b> Leaf blower & shelving unit	-100.00
<b>LESS:</b> Security Deposit \$650.00 + Interest 0.00	<u>-650.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$1,196.27</u></b>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,196.27**. This Order is legally binding and must be served upon the Tenants.

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: November 09, 2012.

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Residential Tenancy Branch