



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, 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; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on August 22, 2012. Mail receipt numbers were provided by the landlord at the hearing. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### 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?

### Background and Evidence

This tenancy started on January 01, 2011. This was a fixed term tenancy which was due to expire on July 31, 2012. Rent for this unit is \$900.00 per month due on the first day of each month.

The landlord testifies that the tenant moved from the rental unit on September 30, 2011. The landlord testifies that the tenant did not give the landlord a forwarding address in writing however the landlord determined the tenant had moved to the address on the application as the landlords new tenants had moved from that address and had informed the landlord, the tenants new landlord informed the landlord that the tenant lived there and on meeting the tenant, the tenant verbally told the landlord that she lived at this address on the application.

The landlord testifies that the tenant lived in the rental unit with another tenant her boyfriend, however the male tenant moved out and did not provide a forwarding address. The landlord testifies that the tenants failed to pay rent for April, 2011. The tenants were supposed to pay rent into the landlord's bank account and were provided with the landlord's bank details for that purpose. The landlord testifies that she did not notice that April's rent had not been paid into her account until September, 2011. When the landlord approached the tenants the female tenant agreed that April's rent had not been paid.

The landlord testifies that the tenants failed to pay rent for September, 2011. The male tenant gave the landlord a cheque for \$550.00 however when the landlord attempted to cash this cheque at the tenant's bank, the tenant's bank would not accept the cheque. The landlord seeks to recover the sum of \$1,800.00 in unpaid rent. The landlord has provided a copy of the un-cashed cheque in evidence

The landlord testifies that the tenant left damage in the rental unit and failed to clean the rental unit. The landlord testifies that her son, who is a carpenter, had to repair a broken

door jamb and the inside casing to a bedroom door. This was left with damage that appeared to have been caused by someone forcing the door open with a crowbar.

The landlord testifies her son also had to replace the hardware for the runner in the closet as it was missing; there was a broken window blind, the closet door knobs had to be repaired, a closet door had to be installed and painted. The landlord testifies that at the start of the tenancy the tenants and landlord had reached an agreement for the tenants to install and paint this door and the landlord deducted a sum of \$100.00 from the security deposit for this work. The landlord testifies that not only did the tenants fail to fit the door they also failed to pay the balance of the security deposit. The landlord testifies the tenants had damaged a fence. The tenants had removed part of the fence to allow access for the tenant's grandchildren who lived in the upper unit to access the tenants unit. The landlord seeks to recover the sum of \$140.00 for this work and has provided an invoice from her son for this work.

The landlord testifies that the tenant failed to do any cleaning at the end of the tenancy. The landlord testifies that there had been an altercation between the male and female tenants, the female tenant was taken away by the police and the male tenant abandoned the rental unit. The landlord testifies that as the unit had already been re-rented for October, 01, 2011 the landlord had to clean the unit to ensure it was ready for the new tenants. The female tenant did return to the unit but only to remove her belongings and the landlord helped the tenant remove her belongings into a truck. The landlord testifies she spent eight hours a day from September 24 until September 30, 2011 cleaning the unit. The landlord seeks to recover \$13.00 per hour for this work to a total sum of \$624.00.

The landlord testifies that the tenants caused damage to the vinyl siding with their barbeque. Several panels were left damaged. The siding has to be removed from the top including two trim pieces, the damaged sections have to be replaced and the siding then put back on. The landlord testifies that this work has not yet been completed as

they are trying to match the color of the siding. The landlord has provided a quote for this work in evidence to the sum of \$350.00.

The landlord testifies that the range hood filter mesh was left in such a dirty condition that it became damaged when the landlord tried to clean it. The landlord seeks to recover the sum of \$16.82 for the replacement filter and has provided a receipt in evidence.

The landlord testifies that the walls in the unit were left with dents and holes in the master bedroom, hallway, and living room/dining room. The walls had to be patched, sanded and painted. The landlord testifies that the unit had last been painted in October 2010 prior to the tenants moving in. The landlord seeks to recover the cost of the paint used for this work to a sum of \$39.70. The landlord has provided the receipt in evidence.

The landlord has provided bank statements showing rent payments, a letter to the tenants concerning rent, invoices and quotes for repairs, a photograph of the damaged fence panel and a copy of the tenancy agreement in evidence.

### Analysis

I have carefully considered all the evidence before me, including the sworn, undisputed testimony of the landlord. I refer the tenant to s. 26 of the *Act* which states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently as the tenant has not appeared to dispute the landlord sworn testimony and documentary evidence I find the landlord has established a claim to recover unpaid rent for April and September, 2011 to the sum of **\$1,800.00**.

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:

1. Proof that the damage or loss exists;
2. Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
4. 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.

With this test in mind I find the landlord has provided no evidence to show that the tenant caused damage to the rental unit. The landlord has not provided a copy of a move in or move out condition inspection report. The purpose of having both parties participate in these condition inspections and for a report to be issued and signed by the parties is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight. The landlord has provided no photographic evidence with the exception of one picture of a missing fence panel to support the landlords claim that the tenants damaged the rental unit or that the tenants removed the fence panel from the property. Furthermore, the landlord has no evidence to support her claim that the tenant was responsible for damage to the vinyl

siding. Consequently, I find the landlord has not met the burden of proof in this matter with respect to part one and two of the test for damages and this section of the landlords claim is dismissed.

With regard to the landlords claim for the range hood filter and paint. As the landlords claim for damages is unsuccessful I find the landlords claim for these items is also unsuccessful as there is insufficient evidence to meet the burden of proof that the filter was left in such a dirty condition that it became damaged when the landlord cleaned it or that the walls were damaged to an extent beyond normal wear and tear which would require repair and painting.

With regards to the landlords claim for cleaning the rental unit; the landlord has provided a detailed list of all areas of the unit cleaned, which also included helping the tenant move furniture out of the unit into a truck. I am satisfied due to the described circumstances of one tenant leaving the rental unit and the other tenant being in the custody of the police at the end of the tenancy that the unit was not cleaned at the end of the tenancy. However I find the amount of hours claimed at eight hours a day for six days to do this work appears to be extreme based on the list of work required. Consequently without a further breakdown of the hours spent on individual jobs I limit the landlords claim to the sum of **\$325.00**.

As the landlord has been partially successful with this claim I find the landlord is entitled to recover the **\$50.00** filing fee. A Monetary Order has been issued for the following amount:

Unpaid rent	\$1,800.00
Cleaning	\$325.00
Filing fee	\$50.00
Total amount due to the landlord	\$2,175.00

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 **\$2,175.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The reminder of the landlords claim is dismissed without leave to reapply.

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 05, 2012.

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Residential Tenancy Branch