



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord – MNR, MNSD, MNDC, FF, O

For the tenant – MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlords have applied for a Monetary Order for unpaid rent or utilities; 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 and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. The tenant has applied to recover double the security and pet deposits' and to recover the filing fee from the landlord for the cost of this application.

One of the tenants and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord served both tenants by registered mail with Notice of this hearing however the landlord served the male tenant at an address provided by the female tenant when the landlord was aware the male tenant did not live at that address. Therefore the male tenant has not been served for the purpose of the *Act* and any Orders will be in the female tenants only. 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 unpaid rent and utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to keep the security and pet deposit?
- Is the tenant entitled to a Monetary Order for double the security and pet deposits?

### Background and Evidence

The parties agree that this tenancy started on October 01, 2011. The tenants named on the landlord's application are co-tenants who entered a fixed term tenancy which was due to expire on September 30, 2012. Rent for this unit was \$1,400.00 per month due on the first day of each month. The tenants paid a security deposit of \$700.00 and a pet deposit of \$700.00. Both deposits were paid on September 26, 2011. The parties attended a move in condition inspection at the start of the tenancy and the landlord did a move out condition inspection in the tenants' absence on August 08, 2012.

### **Unpaid rent and utilities**

The landlord testifies that the tenants failed to pay rent for July, 2012 of \$1,400.00 and failed to pay rent for August, 2012 of \$1,400.00. The landlord's agent testifies that they were aware the female tenant had vacated the unit in July due to conflict with the male tenant. However the female tenant sent this information by e-mail to another agent for the landlord on July 24, 2012 and as that agent was away from work he did not get the email on July 24, 2012 and only forwarded the e-mail to this agent on August 08, 2012. This e-mail did contain an address for the tenant. The landlord's agent testifies that they thought the unit had been abandoned so they posted a notice to enter the unit for August 08, 2012. Upon entering the unit the landlord's agent testifies that they did determine that it had been abandoned.

The landlord's agent testifies that they received a letter from the City concerning the tenants unpaid electricity bill. The landlord had claimed the sum of \$224.00 for this bill however since filing this application the tenant has paid that bill. Therefore the landlord withdraws this section of their claim.

The tenant testifies that the tenants had an arrangement for the rent. The other tenant was responsible for the rent and this tenant paid the bills and food. The tenant testifies she does not know that he did not pay the rent and as it was her intention to move back to the rental unit in August. If the landlord had notified the tenant that the male tenant had moved out she could have paid August rent.

The landlord's agent argues that as landlords they do not have a say in the tenants' personal arrangements or their lives. The landlord's agent testifies that when this tenant mentioned to the landlord's agent that a situation had arisen between the tenants the landlord offered the male tenant another property to rent however the male tenant did not take the landlords offer.

**Money owed or compensation for damage or loss**

The landlord's agent testifies that the male tenant had given the landlord postdated rent cheques and both cheques for July and August were dishonoured at the bank. The landlord's agent testifies that they seek therefore to recover an NSF fee of \$25.00 and a late fee of \$25.00 for Julys rent cheque in accordance with the terms of the tenancy agreement.

The tenant disputes this section of the landlords claim.

**Damages**

The landlords agent testifies that they completed a move out inspection after attempting to call the both the tenants to attend the inspection. The landlord's agent testifies that they posted a final opportunity for inspection on the door of the rental unit on August 07, 2012. During the inspection the landlord's agent testifies that they found the carpets had not been cleaned. They paid to have the carpets steam cleaned and it is noted on the carpet cleaners invoice that the carpets were extremely soiled, urine and stains on the carpets and the carpets never cleaned or vacuumed. The invoice comes to \$336.00 and the landlord seeks to recover the sum of \$224.00 from the tenants for this work. The landlord has provided a copy of the invoice in their documentary evidence.

The landlord's agent testifies that the house was left in an unclean condition particularly the basement. The house inside and outside had to be cleaned and a large amount of garbage removed. The landlord testifies that this took a cleaning company 16 hours to do at \$25.00 per hour and the landlord seeks to recover the sum of \$400.00 from the tenants. A cleaning invoice has been provided in the landlord's documentary evidence.

The landlord's agent testifies that the tenants were responsible under the tenancy agreement to take care of the yard. The tenants failed to cut the grass or remove weeds and the landlord paid the sum of \$55.00 for this work. The landlord has provided a copy of the invoice in their documentary evidence.

The landlord testifies that only one key was found in the mailbox at the end of the tenancy. The building had to be rekeyed by Lock Master and the landlord seeks to recover the sum of \$175.28 for this work. The landlord has not provided a copy of the invoice in evidence.

The landlord's agent testifies that they had to pay the sum of \$210.00 to remove garbage to the dump including two pieces of exercise equipment. The landlord has not provided a copy of the invoice for this work in evidence.

The tenant disputes the landlords claim. The tenant testifies that before she left the unit on July 23, 2012 she and her mother cleaned the rental unit with the exception of the other tenant's bedroom and bathroom. The tenant agrees they did not steam clean the carpets but testifies that her mother vacuumed them. The tenant has provided photographic evidence showing the rental unit and vacuuming track marks on the carpets. The tenant disputes that there was urine and feces on the carpets or fecal matter in the yard. The tenant states that no fecal matter or urine is mentioned on the move out inspection. The tenant testifies that she does not know what happened in the period between her leaving the rental unit and the other tenant vacating.

The tenant testifies that spiders and cobwebs are not mentioned on the move out inspection report. The tenant testifies that she took her dog with her when she moved out and had cleaned up any dog feces in the yard. The tenant testifies that they cleaned the walls and the floors. One day the landlord's agent was in the unit with a plumber and would have seen how clean the tenant had left the unit before she moved. The tenant testifies that had the landlord contacted her to say the other tenants had abandoned the unit the tenant could have gone to the unit to clean again. The tenant testifies that the landlord did not give the tenant any opportunity to attend a move out inspection despite the landlord having an address for the tenant.

The tenant agrees that the other tenant did have some stuff in the shed such as small propane tanks, however the tenant testifies that when she left the unit all the garbage had been placed in the bins.

The tenant agrees that they were responsible for the yard however the landlords kept sending people to the property to do the yard. The tenant testifies that had the landlord informed her that an inspection was taking place the tenant would have returned to the property and cut the grass.

The landlord argues that the only people sent to do yard work was a pest control company that went to spray for dandelions and put fertilizer down as is the landlords standard procedure for all their properties. The landlord's agent testifies that the male tenant was asked to cut the grass and he asked the landlord to take care of it. The tenant testifies that she did not turn her keys over to the landlord as she still had a lease for the rental unit and wanted to continue to live in the unit if the other tenant moved out.

The tenant disputes the landlord's claim of \$210.00 to remove garbage. The tenant testifies she cannot see that there would have been that much garbage left and had the landlord informed the tenant of the inspection then the tenant would have gone to the unit and removed any garbage.

### **Security and pet deposit**

The landlord seeks an Order to keep the tenants security and pet deposit to offset against unpaid rent and damages.

The tenant seeks to recover double the security deposit as the landlord did not give the tenant opportunity to attend the move out inspection and because the landlord did not return the security and pet deposit within 15 days of the end of the tenancy and receiving the tenants forwarding address. The tenant testifies that she did not abandon the rental unit and had made it clear to the landlord that she wanted to stay on at the rental unit if the other tenants moved out.

Both parties have applied to recover their filing fees.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the Act 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.*

The Residential Tenancy Policy Guidelines #13 states

*Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.*

*Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term.*

Consequently in the matter of unpaid rent I find in favor of the landlords claim that rent was unpaid by the tenants for July and August, 2012. Both tenants had a responsibility to ensure the rent was paid by either of both tenants and failed to meet this responsibly. The landlord is therefore entitled to recover the sum of **\$2,800.00**.

I further find that the tenancy agreement does inform the tenants that they will be charged for any NSF fees or late fees at \$25.00. I therefore find in favor of the landlords claim for **\$50.00** for late fees and an NSF fee for Octobers rent.

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.

The landlord has provided a copy of the inspection reports which details some of the cleaning required in the rental unit and garbage left at the unit. However the landlord has not provided sufficient evidence to show that the tenant was given at least two opportunities to attend a move out condition inspection of the rental unit despite the landlords having been given an address for this tenant. The landlord has provided no evidence to show that a final notice for inspection was put on the door of the rental unit. It is not enough for a landlord to simply telephone a tenant as this would not meet the burden of proof that opportunity was given to attend an inspection when the tenant contradicts the landlords claim.

Therefore I find without further corroborating evidence to show the rental unit was left in an unreasonable condition such as photographic evidence it is my decision that the landlord has not met the burden of proof regarding cleaning of the unit or removal of garbage and exercise equipment. I further find the landlord did not inform the tenant that the other tenant had moved out and an inspection was to take place that this tenant could have gone to the rental unit to clean or remove garbage or other items left by the male tenant consequently due to a lack of communication by the landlord I find the landlord did not mitigate the loss by letting this tenant know the male tenant had left the unit so the female tenant could have returned to the unit.

The landlord has not met the burden of proof for the actual costs for the dump fees or the actual costs to rekey the unit. Furthermore, as the tenant intended to return to the unit the tenant was entitled to keep her keys until the end of the fixed term. The landlords claim for damages and cleaning is therefore dismissed without leave to reapply.

I further find the landlord has not met the burden of proof that the unit was abandoned by this tenant. I refer the parties to s. 24(1) and 24(2) of the Residential Tenancy Regulations which state:

**24 (1)** A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

The tenant argues that her intention was to move back to the rental unit had the landlord informed the tenant the other tenants had left the unit. The tenant argues that therefore she had not abandoned the unit as the landlord knew the tenant's intention was to return to the unit. The tenant also argues that had the landlords informed the tenant that an inspection was to take place the tenant could have returned to the unit to clean it again.

With regards to both parties claim for the security and pet deposits; the landlord seeks to keep the deposits and the tenant seeks to recover double the deposits. I refer the parties to s. 38(1) of the *Act* which states:

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The tenant argues that she gave the landlord her forwarding address on July 23, 2012, therefore the landlord did not return the deposit within 15 days and has extinguished their right to file a claim against the deposits as they failed to provide at least two opportunities for inspection and failed to give the tenant a copy of the inspection report within 15 days. The landlord argues that the tenants had abandoned the unit.

Having considered the arguments I find the tenant did give the landlords an address but as the tenants argument is that she wanted to return to the rental unit after the other tenant left I cannot consider this address to be a forwarding address for the purpose of the *Act* as the tenant had indicated to the landlord that she wanted to move back into the unit. Likewise the landlord cannot deem the unit was abandoned for the same



reason. Therefore, I find the tenant did not provided a forwarding address for the purpose of the *Act* and the landlord had no valid reason to consider the unit abandoned. Consequently, I find the tenant is not entitled to recover double the security and pet deposit but is entitled to recover the deposits paid of **\$1,400.00**.

However, sections 38(4), 62 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep **\$1,400.00** from the tenants' security and pet deposit to compensate the landlord partially for the unpaid rent.

As both parties have been partially successful with their claim I find each party must bear the cost of filing their own application. A Monetary Order has been issued to the landlord for the following sum:

Unpaid rent	\$2,800.00
Late fees and NSF fees	\$50.00
Less security and pet deposits	(-\$1,400.00)
Total amount owed to the landlord	\$1,450.00

### Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. The tenant's monetary award of **\$1,400.00** has been offset against the unpaid rent.

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 **\$1,450.00**. The order must be served on the tenant 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: December 03, 2012.

---

Residential Tenancy Branch