



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damage to the unit and to keep all or part of the security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

On September 25, 2012, this matter was adjourned to allow the parties to exchange documents. The hearing was reconvened and concluded on November 5, 2012.

### Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to a monetary order for damages to the unit?

Are the landlords entitled to retain all or part of the security deposit?

### Background and Evidence

The tenancy began on January 1, 2011. Rent in the amount of \$1,900.00 was payable on the first of each month. A security deposit of \$950.00 was paid by the tenants. The tenancy ended at the end of June 2012. Filed in evidence is a copy of a tenancy agreement.

The landlord testified a move-in inspection was completed on January 1, 2011, with the tenant. The landlord testified he completed the move-out inspection while the tenant was removing his belongings and the tenant did not participate. Filed in evidence is a copy of the move-in and move-out inspection report.

The witness (JB) for the landlord stated he completed the move-out inspection with the landlord, the witness stated the tenant was at the rental unit, however, he was not sure why the tenant did not participate in the inspection and the landlord did not ask the tenant to participate while in his presence.

On cross-examination of the landlord by the tenants' legal advocate, the landlord reiterated that he is positive the move-in inspection was completed on January 1, 2011.

The tenant testified that he has never seen the move-in or move-out inspection report. The tenant stated the landlord told him everything was okay at the end of tenancy.

The landlord claims as follows:

a.	Loss of rent for March, April, May and June 2012	\$7,600.00
c.	Damages - Cleaning and removing garbage	\$550.00
d.	Filing fee	\$50.00
	<b>Total claimed</b>	<b>\$12,650.00</b>

Loss of rent for March, April, May and June 2012

The landlord testified the tenant did not pay any rent for March, April, May and June 2012. The landlords seek to recover unpaid rent in the amount of \$7,600.00.

The landlord testified that the tenants also did not pay all rent for August 2011, and still owes the amount of \$660.00.

The advocate for the tenants stated the tenants' rent was paid by two sources. The first source was cheques from the tenants in the amount of \$1,900.00, which were directly paid to the landlord (AS) and cashed by the landlord. Filed in evidence are the account history financial enquiries reports, which show the above amount clearing the tenants' account.

The advocate stated the second source was by cheque from the ministry of social services (the "ministry") on the tenants' behalf in the amount of \$650.00, which were directly paid to the landlord (RH) and cashed by the landlord (RH). Filed in evidence are copies of the cashed cheques.

The advocated stated her clients were not aware the ministry was paying \$650.00 on their behalf until her clients received a tax statement from the ministry showing the landlord (RH) receiving \$7,150.00 for shelter allowance. The advocate states as a result of this the tenants overpaid of rent in the amount of \$7,150.00, the tenants did not pay any rent for March, April, May and June 2012. The advocated stated her clients agree there is a balance owing of rent in the amount of \$450.00.

The tenant testified that he had permission by the landlord to renovate the bathroom in the rental unit at the start of the tenancy and he was allowed to deduction the cost from August 2011, rent.

The landlord argues the \$650.00 he received from the ministry was for him to cut the front grass as this was the tenants' responsibility, under the terms of the tenancy agreement. The landlord has filed invoices he billed the tenants.

*Damages - Painting and repair of flooring*

The landlord testified that the tenants left a large amount of holes in the walls and painted some of the walls red. Filed in evidence is an invoice for \$3,356.00 to repair and paint.

The landlord testified that the tenants damaged the floors in the hallway and living room and the floors had to be repaired. Filed in evidence is an invoice for \$1,350.00 for this.

The witness (GH) for the landlord testified that he moved into the unit on July 1, 2012 and the unit appeared to be freshly painted except for the kitchen.

The witness (GH) testified he does not believe the floors were repaired as they are still scratched and no one has made any repairs since they moved in on July 1, 2012. However, he did not see the floors on June 30, 2012 to compare.

The tenant testified that he hung a mirror in the hallway and when the mirror was removed it left holes, but the holes were normal wear and tear and not damage.

The tenant testified that the unit was in poor condition when he moved into the unit and admits he changed one wall to red, but disputes any further painting was required.

The tenant testified that he did not damage the floor. The tenant stated any scratches on the floor were from normal wear and tear.

*Damages - Cleaning and removing garbage*

The landlord testified that the tenant did not clean the unit and he paid \$360.00 to have the unit cleaned.

The witness (GH) for the landlord testified he and his wife moved into the unit on July 1, 2012. The witness stated that his wife did clean the rental unit and was compensated

by the landlord. The witness stated he does not know the amount she was compensated or in what form she was compensated.

The landlord testified that the tenant also left a large amount of garbage and he paid \$190.00 to have the garbage removed.

### Analysis

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the landlord has the burden of proof to prove a violation of the Act by the tenant and a corresponding loss as a result.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

### Loss of rent for March, April, May and June 2012

In this case, the evidence of the landlord was the tenants did not pay \$7,600.00 in rent. The landlord did not dispute they received \$1,900.00 by cheque each month from the tenants and that the ministry was paying \$650.00 by cheque each month. The landlord argues the \$650.00 he received from the ministry was for maintaining the front lawn.

I find it unreasonable that the tenants were unaware the landlord was receiving \$650.00 from the ministry for a period of eleven months, as any cheque they received from the ministry would clearly indicate a shelter portion being deducted from their total allotted amount.

I do not accept the evidence of the landlord that the \$650.00 was for him to maintain the front lawn. The ministry pays shelter allowance, not yard maintenance. Further, it would be unconscionable that it would cost a tenant \$650.00 per month to maintain the front yard. Therefore, I find the amount of \$7,150.00 is rent paid by the ministry on behalf of the tenants.

Rent for the four months claimed by the landlords equals the amount of \$7,600.00, and the overpayment of rent equals the amount of \$7,150.00. Therefore, I find the balance owed in rent is \$450.00 as acknowledged by the tenants.

Further, I accept the tenants had permission to deduct \$660.00 from August 2011, rent for work completed to the unit as it would be unreasonable for landlords to wait ten months claiming rent was unpaid.

Based on the above, I find the landlords are entitled to monetary compensation for unpaid rent in the amount of **\$450.00**.

### Summary of Damages

I find the copy of the move-in inspection submitted by the landlords as having been signed by the parties on January 1, 2011, was not created or available online to print from the Residential Tenancy Branch (the "RTB") website until March 2011. Therefore, I find, on a balance of probabilities, that the document submitted to the RTB for consideration was forged for this dispute resolution hearing by the landlords.

As I have found that the landlords have submitted a forged document in order to discredit the tenants and mislead the Residential Tenancy Branch, I find that the landlords lack credibility and this brings all documentary evidence and testimony of the landlords into question.

As I have found that the landlords' testimony and documentary evidence lacks credibility or reliability, the testimony and evidence of the tenants will be preferred.

The tenant claims the floor scratches were normal wear and tear and denies damaging the floor. I find in the absence of a move-in and move-out inspection report properly completed in accordance with the Act, and any other evidence to support the floors were damaged in excess of normal wear and tear, I find the landlord has failed to prove the condition of the unit at the start of tenancy or that any scratches to the floor were not normal wear and tear. As a result, the landlords' claim for compensation for repairing the floor is dismissed.

As the tenant has admitted to painting one wall red, I find the tenants have breached the Act, as they were required to return the wall to the original colour at the end of tenancy.

However, as I have found the documentary evidence of the landlords questionable, I find the landlords have not proven an actual amount to be compensated for this. Therefore, I dismiss the landlords' claim for compensation for painting.

Further, I accept the testimony of the tenant the rental unit was left in a reasonable state as there was no photographic evidence to support the landlords' claim and any documentary evidence submitted by the landlord is questionable. Therefore, I dismiss the landlords' claim for compensation for cleaning and garbage removal.

I find that the landlord has established a total monetary claim of **\$450.00** comprised of unpaid rent.

As the landlords have largely been unsuccessful with their application and the only amount awarded to the landlords is the amount acknowledge at the onset of the hearing by the tenants, I do not allow the landlords to recover the cost of filing the application from the tenants.

I order that the landlords retain from the security deposit the amount of **\$450.00** in full satisfaction of their claim and I grant the tenants a monetary order for the balance due of their security deposit in the amount of **\$500.00**.

Should the landlords fail to comply with this order, this order may be filed in the Provincial Court (Small Claims) by the tenants and enforced as an order of that Court.

### Conclusion

The landlords' monetary order is off-set with a portion of the tenants' security deposit. The tenants are granted a monetary order for the balance due of the security deposit.

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 23, 2012.

---

Residential Tenancy Branch