



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:11 a.m. in order to enable them to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she witnessed the caretaker of the tenants' building hand the tenants a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on June 11, 2012. She testified that she sent copies of the landlord's dispute resolution hearing package to both tenants to the forwarding address provided by the tenants at their move-out inspection by registered mail on September 14, 2012. She provided copies of the Canada Post Tracking Number to confirm these registered mailings. I am satisfied that the landlord served the tenants with the above documents in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent, losses and damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

This one-year fixed term tenancy commenced on September 1, 2011. Although this fixed term tenancy was to end by August 31, 2012, the tenants vacated the rental unit by July 6, 2012, without paying their July 2012 rent. Monthly rent was set at \$1,180.00,

payable in advance on the first of each month. The landlord continues to hold the tenants' \$590.00 security deposit paid on August 7, 2011.

The landlord entered into written evidence copies of the Residential Tenancy Agreement (the Agreement), which included a liquidated damages clause requiring the tenants to pay liquidated damages of \$300.00 if they ended their tenancy before August 31, 2012. The landlord also entered into written evidence copies of the joint move-in and joint move-out condition inspection reports of August 28, 2011 and July 6, 2012.

The landlord's application for a monetary award of \$3,281.42 included the following items listed on the Monetary Order Worksheet entered into written evidence:

<b>Item</b>	<b>Amount</b>
Unpaid July 2012 Rent	\$1,180.00
Cleaning	200.00
Painting and Repairs	600.00
Carpet Cleaning	260.00
Drapes Cleaning	181.42
Replacement of Damaged Doors	450.00
Replacement of Locks and Keys	100.00
Replacement of Tenant Manual	10.00
Liquidated Damages	300.00
<b>Total Monetary Award Requested</b>	<b>\$3,281.42</b>

The landlord entered into written evidence copies of supporting receipts.

### Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the August 31, 2012 date specified in the Agreement. As such, the landlord is entitled to compensation for losses incurred as a result of the tenants' failure to comply with the terms of their Agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent for July 2012 or August 2012. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for July and August 2012. The landlord testified that she placed a number of advertisements on the landlord's website and on a series of rental websites to re-rent the premises immediately after the landlord served the tenants with the 1 Month Notice. The landlord testified that five showings were conducted, the first of which occurred by June 18, 2012. The landlord was able to locate a new tenant who took possession of the rental unit by August 1, 2012 for a monthly rent of \$1,200.00. Since the tenants did not vacate the rental unit until July 6, 2012, and work was necessary to clean, repair and paint the premises following the end of this tenancy, I find that the landlord has taken adequate measures to discharge the duty under section 7(2) of the *Act* to minimize the tenants' loss.

For the above reasons, I find that the landlord is entitled to a monetary award of \$1,180.00 for unpaid rent owing from July 2012. I reduce the amount of the landlord's monetary award by \$20.00 for the additional rent that the landlord was able to obtain from the new tenants who took possession of this rental unit for August 2012, the last month of the tenants' fixed term tenancy Agreement.

The landlord provided undisputed oral and written evidence of losses arising out of this tenancy, including receipts. The landlord also entered into written evidence a signed July 6, 2012 statement from one of the tenants acknowledging that the tenants accepted charges of \$3,421.86 arising out of this tenancy.

As per the terms of the Agreement, I allow the landlord a monetary award of \$300.00 in liquidated damages, noting that this was agreed to both at the commencement of this tenancy and by the tenant who signed the statement at the end of this tenancy allowing the landlord to recover this amount.

I also allow the landlord a monetary award for the claimed amount for damage arising out of this tenancy with the following exceptions.

Residential Tenancy Branch Policy Guideline 40 identifies the useful life of items associated with residential tenancies for the guidance of Arbitrators in determining claims for damage. With respect to the repainting of interior walls, Policy Guideline 40 establishes that the useful life of an internal paint job is four years. As the landlord testified that this rental unit was painted shortly before this tenancy commenced in August 2011, I find that the landlord is entitled to recover  $\frac{3}{4}$  of the repainting and repair costs incurred in repainting this suite at the end of this tenancy. This results in a monetary award of \$450.00 for repainting and repairs ( $\$600.00 \times \frac{3}{4} = \$450.00$ ).

At the hearing, the landlord testified that the tenants returned only one of the keys issued to them and not the second key. The landlord's application for dispute resolution requested \$100.00 to rekey the locks and cut new keys. Section 25(1) of the *Act* establishes that a landlord is responsible for all costs associated with rekeying or otherwise altering locks at the commencement of a new tenancy. As such, I dismiss the landlord's application for a monetary award for the rekeying of locks and issuance of new keys to the new tenants without leave to reapply.

I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the filing fee from the tenants.

### Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to obtain unpaid rent, damages arising out of this tenant and the filing fee, and to retain the tenants' security deposit:

<b>Item</b>	<b>Amount</b>
Unpaid July 2012 Rent	\$1,180.00
Less Difference Between Rent Obtained by Landlord for August 2012 and Rent Owed by Tenants According to the Agreement (\$1,200.00 - \$1,180.00 = \$20.00)	-20.00
Cleaning	200.00
Painting and Repairs (\$600.00 x $\frac{3}{4}$ = \$450.00)	450.00
Carpet Cleaning	260.00
Drapes Cleaning	181.42
Replacement of Damaged Doors	450.00
Replacement of Tenant Manual	10.00
Liquidated Damages	300.00
Less Security Deposit	-590.00
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$2,471.42</b>

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to

comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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

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Residential Tenancy Branch