



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for cleaning; for compensation for damage or loss; for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on July 27, 2012 for a 1 year fixed term tenancy beginning on August 1, 2012 for a monthly rent of \$745.00 due on the 1<sup>st</sup> of each month with a security deposit of \$365.00 paid.

The tenancy agreement included a clause indicating that if the tenant ends the tenancy within 12 months of the start of the tenancy the tenant agrees to pay the landlord \$500.00 as liquidated damages. The landlord submits the \$500.00 is a genuine pre-estimate of the costs associated with re-renting the unit.

The landlord testified that the costs included in this pre-estimate include the costs of preparing the rental unit for a new tenancy; weekly dusting until rented; advertising costs in local papers; and administrative costs for showing the unit and negotiating a new tenancy. The landlord provided no documentary evidence to support this testimony.

The landlord seeks to collect liquidated damages from the tenant. The tenant submits that because he was evicted the requirement to pay liquidated damages should be waived.

The landlord testified and provided evidence that the tenant did not give notice of his intent to end the tenancy and that they found out the tenant had vacated the rental unit when the tenant returned the keys and provided his forwarding address to the office (not to any person).

The tenant testified that he received a 10 Day Notice to End Tenancy for Unpaid Rent on September 5, 2012 with an effective date of September 18, 2012. The tenant testified that he accepted the notice and moved out of the rental unit, although he could not recall the specific date that he vacated the unit.

The tenant acknowledges that he owes the landlord \$120.00 for rent for the month of September and testified that he had provided the landlord with written permission to retain this amount from the security deposit. The landlord did not provide any testimony in response to these statements.

The landlord also seeks compensation for the loss of rent for the month of October 2012 because the tenant failed to give the landlord notice to end the tenancy. The landlord testified that the rental unit was not re-rented until January 2013 and provided no evidence of any attempts to re-rent the unit at any time.

The landlord testified that when a 10 Day Notice was issued it was merely a notification to the tenant that if he fails to pay the rent identified he may be evicted. The landlord testified the tenant did not contact the landlord at anytime to discuss the notice.

The landlord did not indicate whether the landlord attempted to contact the tenant to confirm if the tenant intended to pay the rent or move out of the rental unit; to show the unit to potential tenants if the tenant did vacate; or to schedule a move out condition inspection.

The landlord testified that he did not schedule a move out condition inspection with the tenant because he had called the tenant and the tenant failed to return his call. The landlord also testified that despite being provided with the tenant's forwarding address on September 28, 2012 he did not send the tenant a Notice of Final Opportunity to Schedule a Condition Inspection Report because the tenant had moved out.

The landlord has submitted a copy of a Condition Inspection Report completed both at move in and at move out. The move in section is signed by the tenant and landlord's agent but there are no signatures of either party acknowledging the condition of the unit at the end of the tenancy. As noted above the landlord did not schedule a move out inspection with the tenant.

The landlord seeks compensation for general cleaning and for carpet cleaning. The landlord submits that the Report indicates the total cost of the general cleaning based on \$12.00 per hour. For example, the report indicates in the bath room the landlord charged the tenant \$12.00 for cleaning the toilet and \$12.00 for cleaning the bathtub and sink, representing 1 hour each for the two tasks identified.

In testimony the landlord explained that the entire bathroom took 2 hours to clean that included cleaning the entire bathroom including cupboards, counters, mirrors, etc. The landlord did not explain why these other items he identified in his testimony were not marked on the Report as requiring cleaning or why the landlord felt the need to clean those items again and charge the tenant.

The landlord submits that in addition to the bathroom the landlord had to clean the stove/vent; fridge; kitchen cabinets and countertops; windows; and the living room carpets. The tenant testified that he cleaned the entire unit with the exception of the stove and carpet.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Based on the testimony of both parties I accept the landlord is entitled to the balance of rent owed for the month of September 2012 in the amount of \$120.00.

Based on the testimony of both parties I find the tenancy ended as a result of the landlord issuing a 10 Day Notice to End Tenancy for Unpaid Rent under Section 46 of the *Act* on September 5, 2012.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and **must** vacate the rental unit by that date.

Under Section 46, if the landlord issues such a notice there is no requirement, under the *Act*, for the tenant to advise the landlord that he intends to accept the notice. In addition, the two page notice makes only one statement in regard to a tenant's

acceptance of the notice and that is that if the tenant accepts the notice they must vacate the unit on or before the effective date.

As such, I find the tenant was not obligated to inform the landlord that he intended to vacate the rental unit. However, the landlord issued the 10 Day Notice as a result of the tenant's breach of the *Act* and tenancy agreement and therefore I find the landlord is entitled to compensation for the month of October 2012 as claimed.

Section 7 of the *Act* requires a landlord who claims compensation for damage or loss that results from the tenant's non-compliance with the *Act*, the regulations or tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In the case before me I find that once the tenant failed to pay the rent in full on the 5<sup>th</sup> day after receipt of the 10 Day Notice it would have been reasonable for the landlord to contact the tenant to find out what his intention was in regard to vacating the rental unit.

Further, I find the landlord has provided no evidence or testimony that they attempted to show the rental unit to prospective tenants at any time during the month of September, 2012.

Finally, I note the *Act* requires the landlord to contact the tenant to arrange a move out condition inspection and in so doing he would have been able to determine the tenant intended to move out in accordance with the 10 Day Notice. Based on the landlord's testimony no attempts were made to schedule a move out inspection.

For these reasons, I find the landlord failed to take any steps to mitigate the loss of rent for the month of October, 2012 and I dismiss this portion of the landlord's claim. I also note the landlord testified during the hearing that they were not seeking any compensation for the months of November and December 2012 despite the rental unit not being rented until January 2013.

I accept, based on the testimony of the landlord that the liquidated damages clause in the tenancy represents a valid fee for damages suffered by the landlord as a result of the ending of the tenancy prior to the 12 month fixed term.

I am not persuaded by the tenant's position that because the tenancy ended as a result of an eviction notice from the landlord and not from his notice to end tenancy. As noted above the tenant's breach of the *Act* and tenancy agreement in failing to pay rent in full for the month of September caused the tenancy to end. Therefore it was in fact the tenant who ended the tenancy prior to the 12 month period required to fulfill his commitment to the tenancy agreement and I find the landlord is entitled to \$500.00 for liquidated damages.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the

landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

While the landlord has provided a Condition Inspection Report indicating several items needed cleaning I find the inspection was completed in the absence of the tenant without any attempts made by the landlord to schedule a move out inspection.

As such, and in conjunction with the testimony provided by the tenant that disputes that anything other than the oven and living room carpet needed cleaning I find the landlord has failed to establish the tenant should be held responsible for cleaning the fridge; kitchen cabinets and countertops; windows; or the bathroom.

For these reasons, I find the landlord is entitled to compensation for carpet cleaning in the amount of \$80.00 and cleaning the oven in the amount of \$24.00 as claimed. I dismiss the remainder of the landlord's claim for cleaning in the amount of \$72.00.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$774.00** comprised of \$120.00 rent owed; \$500.00 liquidated damages; \$80.00 carpet cleaning; \$24.00 general cleaning and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$365.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$409.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced 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: January 04, 2013.

---

Residential Tenancy Branch

