



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for cleaning of, or damage to, the rental unit; for unpaid rent; for compensation under the Act and the tenancy agreement; for an order to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

### Preliminary Matters

The Landlord had named a second respondent as a tenant in their Application. The second respondent is identified as the Advocate for the Tenant on the cover of this decision. At the outset of the hearing the Advocate for the Tenant testified that she was not on the tenancy agreement and had not signed the tenancy agreement. She explained she was the girlfriend of the Tenant.

The Landlord has provided a copy of the tenancy agreement in evidence. The last name of the Advocate is not on the tenancy agreement. There is someone with an abbreviated first name which is the same as the abbreviated first name of the Advocate, listed; however, the last name is very different.

This leads me to find that the Landlord has insufficient evidence to prove the Advocate was a tenant in the rental unit. For these reasons, I do not include the Advocate in the style of cause for this matter.

I also note that this matter was initiated as cross Applications and began to be heard on January 22, 2013. The Tenant did not appear at that hearing and therefore, I dismissed that Application in an Interim Decision made on January 22, 2013.

The Agent for the Landlord who appeared at the original hearing requested an adjournment, as they were unaware of the Landlord's Application, which had been filed by a different Agent. I allowed the adjournment and the hearing reconvened on February 19, 2013.

#### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

#### Background and Evidence

This tenancy began on April 1, 2012, and the parties entered into the Landlord's tenancy agreement. The monthly rent was \$700.00, payable on the first day of the month, and the Tenant paid a security deposit of \$350.00 to the Landlord. This was a month to month tenancy.

The Landlord alleges that the Tenant moved out of the rental unit without notice on November 1, 2012. The Agent for the Landlord testified that the Tenant had been using a pre-authorized debit for payment, however, the account was closed on November 1, 2012, and no November rent was paid. The Landlord is claiming \$700.00 for one month of rent, plus a late payment fee of \$25.00 and an NSF fee of \$25.00, as allowed in the tenancy agreement.

The Landlord alleges that the Tenant failed to clean the rental unit adequately before he moved out. The Landlord is claiming \$65.00 for cleaning the carpets, \$160.00 for general cleaning of the rental unit, \$35.00 for cleaning the fireplace, and \$32.00 for cleaning materials.

In evidence the Landlord supplied photographs of the rental unit, the tenancy agreement, the outgoing condition inspection report, and a ledger of amounts owed by the Tenant.

In reply, the Tenant testified he tried to give the former Agent of the Landlord a Notice to End Tenancy but could not get a hold of the Agent. The Tenant testified that he left a written note on the door of the Agent for the Landlord's office.

The Tenant was unable to recall the date that he allegedly gave the Landlord a Notice to End Tenancy. He asserted several times that he gave the Landlord the required amount of notice; however, he could not recall the date he gave the Notice to the Landlord. The Tenant also testified that he had previously told the prior Agent that he was vacating the rental unit on November 1, 2012. The Tenant testified he took a photograph of the Notice to End tenancy he posted on the Agent's door, but had not submitted it in evidence.

When asked why the Tenant did not keep a copy of the Notice to End tenancy he alleges he gave to the Landlord, he testified that he did not expect to have to provide evidence of this Notice at the time he was giving it.

Following a request for assistance on the date he posted the Notice to the Door to his Advocate, the Tenant's Advocate testified that that the Notice was given in enough time to end the tenancy on November 1, 2012.

The Tenant also disputes the photographs entered into evidence by the Landlord and testified that there is no evidence that the photos were of the actual rental unit he occupied. He asserted that the Landlord had to prove these pictures were of the actual rental unit.

The Tenant testified that he did not like the carpets in the rental unit because the upset his asthma, and he requested that the Landlord remove the carpets. The Tenant testified he was upset because the Landlord would not replace the carpets.

The Tenant also testified that he rented the rental unit because it had a patio and he wanted to enjoy the outdoors on the patio. The Tenant testified that the Landlord began work on repairing the patios and he was unable to enjoy his patio.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find the Tenant breached section 45 of the Act, and the tenancy agreement, by failing to give the Landlord the required Notice to End Tenancy. I further find the Tenant breached section 37 of the Act by failing to return the rental unit to the Landlord in a reasonably clean state.

Under section 45 of the Act, and under the tenancy agreement, the Tenant was required to give the Landlord one month of notice to end the tenancy. For example, if the Tenant wanted the tenancy to end on October 31, 2012, the Tenant should have given the Landlord notice no later than September 30, 2012. That notice could have been posted to the Agent's door no later than September 27, 2012, as the Act deems service to be given three days after posting on the door.

I find that the Tenant's evidence in this regard was inconsistent, which brought into question the credibility of the assertions, and furthermore, there was insufficient evidence from the Tenant that a notice to end tenancy had ever been given in the approved form, as required under sections 45 and 52 of the Act.

Even if I found the Tenant had given the correct notice to end the tenancy (which I do not), he was not able to end the tenancy on the first day of November without incurring rent for that month. This is because a Notice to End tenancy must be given (and deemed received), no later than the day before the date that the rent is due and the tenancy then ends on the last day of the following month. By staying in the rental unit on November 1, 2012, the Tenant is required to pay the Landlord rent for that entire month, as the Landlord was precluded from renting it on the first day of that month.

As to cleaning the rental unit, I find the Tenant failed to clean the carpets before vacating the rental unit. Under the tenancy agreement and under Policy Guideline 1 to the Act, the Tenant was required to have the carpets cleaned at the end of the tenancy.

I do not allow the other cleaning claims of the Landlord. I find the Landlord had insufficient evidence of the other cleaning costs, such as invoices or receipts indicating what was cleaned, how long it took and who did the cleaning. I dismiss these claims without leave to reapply.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

As described above, I find that the Tenant has breached the Act and tenancy agreement, and these breaches have caused the Landlord to suffer losses.

The Landlord has established claims for \$700.00 for one month of rent, \$25.00 for a late payment fee, \$25.00 for not honouring the November 2012 rent payment, \$65.00 for carpet cleaning, and the \$50.00 fee for filing the Application for a total monetary claim of **\$865.00**.

I order that the Landlord retain the deposit of **\$350.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$515.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Tenant breached the Act and tenancy agreement by failing to give the Landlord the required Notice to End tenancy, and by failing to clean the carpets. The other cleaning claims of the Landlord are dismissed without leave due to insufficient evidence.

The Landlord has established a monetary claim, may keep the security deposit in partial satisfaction of the claim, and is granted a monetary order for the balance.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 20, 2013

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Residential Tenancy Branch

