



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNR, MNDC, FF*

### **Introduction,**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for loss of income, cost of cleaning the carpet, for the cost of repairing the door frame and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

This hearing was originally conducted on December 20, 2012. The tenant did not attend. The Arbitrator granted the landlord's application. On January 07, 2013, the tenant filed for a review of the decision. The tenant's application was granted and this dispute was scheduled to be re heard on this date – February 26, 2013.

### **Issues to be decided**

Is the landlord entitled to a monetary order for loss of income, cost of cleaning the carpet, for the cost of repairing the door frame and for the recovery of the filing fee?

### **Background and Evidence**

The tenancy started on July 15, 2011 for a fixed term of eight months, with an end date of March 15, 2012. According to the tenancy agreement at the end of the fixed term, the tenancy would continue on a month to month basis. Rent was \$2,180.00 due on the fifteenth day of each month. Prior to moving in the tenant paid a security deposit of \$1,090.00. The tenant moved out on March 14, 2012.

The tenant stated that she made application for a new rental unit on February 02, 2012 and spoke with the landlord about providing his name as a reference, which was a requirement. The tenant spoke with the new landlord who confirmed that they always carried out reference checks with the current landlord of any prospective tenant.

The tenant stated that after being approved to rent a unit at the new rental place, on February 08, she provided the landlord with a hand written note informing him that she would be moving out on March 15, 2012.

The tenant testified that she dropped the note into a locked mail box in which she deposited her rent cheque. The tenant stated that she took a photo of the notice and has filed a copy along with her evidence. The landlord denied having received the notice to end tenancy. The landlord filed copies of emails, one of which dated February 02, 2012 from the tenant, makes reference to the return of the security deposit.

The tenant also testified that during a conversation with the landlord he told her that he was expecting visitors from China who would occupy the rental unit after she moved out and that he planned on moving into the rental unit after that.

The landlord stated that on March 14, he only found out that the tenant was moving out when she handed him the key. He also testified that he conducted a move out inspection on his own. Later he changed his testimony and stated that the tenant was present during the move out inspection and that she agreed to cover the cost of cleaning the carpet and repairing the door frame. The tenant testified that she agreed to pay for the cost of shampooing the carpet but not for the repair of the door frame.

The tenant stated that the landlord personally installed a lock on the inside of the door. She stated that the lock was improperly installed and that was the cause of the crack in the door frame. The landlord agreed that he had installed the lock but stated that it was fine at the time he installed it. He also stated that the crack may have resulted from the constant improper opening and shutting of the door.

The landlord stated that it took him one month to have the carpet cleaned and fix the door frame. He testified that he advertised the availability of the rental unit in the local newspaper but was unable to find a tenant and the unit was vacant for the period of March 15 to April 16 after which time, the landlord moved in. The landlord stated that he has occupied the unit since April 16, 2012.

The tenant testified that the unit is on the first level and easily visible from the street. She stated that she passed by a few times and saw lights on and people inside the rental unit during the period that the landlord says it was unoccupied. The landlord is claiming loss of income for this period. The tenant also stated that she was unaware of the landlord's intention to claim a loss of income as he did not mention this at the move out inspection or in the emails between the two parties, after the tenancy ended.

After the tenant moved out, she provided the landlord with her forwarding address and started corresponding with him by email for the return of the deposit. Both parties filed copies of emails between them. The main focus of the emails was the disagreement about the responsibility for the repair of the door frame and the cost of doing so.

The tenant pointed out that there was no reference to a late notice to end tenancy and a loss of income in any of the emails sent or received throughout the period that they discussed the return of the security deposit. In an email dated April 15, 2012 the landlord agreed to return the deposit after he deducted \$160.00 for shampooing the carpet and the cost of the repair of the door frame which was undetermined on that day.

The landlord testified that he found someone to fix the door frame on April 16, and he sent a note to the tenant informing her that the cost was \$250.00. The landlord filed a copy of an invoice as proof of payment. The invoice is undated, has no business address and does not have a business number. The landlord also filed a copy of receipt for \$160.00 for steam cleaning the carpet. This receipt is dated March 17 and has no business address or number.

The landlord is claiming the following:

1.	Loss of income for March 15 – April 16, 2012	\$2,180.00
2.	Carpet cleaning	\$160.00
3.	Repair door frame	\$250.00
4.	Filing fee	\$50.00
	Total	<b>\$2,640.00</b>

### **Analysis**

#### **1. Loss of income for March 15 – April 16, 2012**

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

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

The tenant stated that she provided verbal notice on February 02, 2012 during a conversation with the landlord regarding using him as a reference for her application to rent and written notice on February 08, 2012 which she deposited into the landlord's locked mail box. The landlord denied having received the notice.

Based on the testimony and documentary evidence filed by both parties, I find that the landlord is not entitled to his claim for loss of income for the following reasons:

1. I prefer the testimony of the tenant as I find it to be credible and on a balance of probabilities, I find that it is more likely than not that the tenant provided the landlord with adequate notice to end the tenancy, both in writing and verbally when she asked him for permission to use him as a reference.
2. The landlord did not mention his claim for loss of income in the multiple emails that were filed into evidence by both parties. This claim surfaced only after September 2012, at which time the tenant had applied for and was awarded double the return of the security deposit, pursuant to section 38 of the *Residential Tenancy Act*
3. The landlord did not file sufficient documentary evidence to support his attempts to re rent the unit.
4. The landlord has not re rented the unit after the tenant moved out and at the time of the hearing was occupying the rental unit himself. Accordingly, I find that it is more likely than not that the landlord planned to move into the rental unit and therefore did not make reasonable efforts to re rent the unit.
5. The landlord testified that it took him a month to clean the unit and fix the door frame. However, as per the invoice, the carpet was cleaned on March 17. The landlord testified that the door frame was fixed within one day on April 16, 2012.
6. References are made to persons occupying the unit in the various emails between the two parties, after the tenancy ended. Therefore, I also find the tenant's testimony about the rental unit being occupied prior to April 16, 2012, to be credible.

Therefore for all the above reasons, I dismiss the landlord's claim in the amount of one month's rent for loss of income

2. Carpet cleaning - \$160

Based on the oral testimony of both parties, I find that the tenant agreed to cover this cost. Therefore the landlord is entitled to his claim of \$160.00.

3. Repair door frame - \$250.00

The landlord agreed that he had installed a lock on the inside of the door. The tenant stated that the lock was improperly installed which caused the door frame to crack. I have to determine whether the tenant was negligent and whether her actions caused the door frame to crack.

Based on the testimony and documentary evidence, I find that the lock was not professionally installed and that by the landlord's own admission, the crack was caused by the opening and closing of the door. Use of the door is necessary for the tenant to gain access to the rental unit. Again on a balance of probabilities, I find that it is more likely than not that the crack in the door frame was caused by the improper installation

of the lock which caused some damage to the door frame every time the door was used which eventually led to the cracking of the door frame.

Even if I find that the tenant was negligent which I do not, I find that the receipt supplied by the landlord does not contain the basic elements of a proper receipt. Accordingly the landlord's claim for \$250.00 is dismissed.

4. Filing fee - \$50.00

The landlord has not proven his case and is therefore not entitled to the recovery of the filing fee. The amount awarded to the landlord was agreed to by the tenant prior to this hearing.

Overall the landlord has established a claim for \$160.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

**Conclusion**

I grant the landlord a monetary order in the amount of **\$160.00**.

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: February 26, 2013

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Residential Tenancy Branch