



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF, O

### Introduction

This hearing was convened by way of conference call concerning applications filed by the landlord and by the tenants. The landlord has applied for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for double the amount of the pet damage deposit or security deposit; and to recover the filing fee from the landlord for the cost for the application.

The landlord company was represented at the hearing by an agent, and both tenants also attended. The landlord's agent also called one witness, and the landlord, one of the tenants, and the witness each gave affirmed testimony. The parties also provided evidentiary material prior to the commencement of the hearing to each other and to the Residential Tenancy Branch. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Are the tenants entitled to recovery of all or part or double the amount of the pet damage deposit or security deposit?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on November 1, 2011 and ended on October 31, 2012. Rent in the amount of \$1,150.00 per month was payable in advance on the 1<sup>st</sup> day of each month, and on October 19, 2011 the landlord collected a security deposit from the tenants in the amount of \$575.00 which is still held in trust by the landlord.

The landlord's agent further testified that on October 2, 2012 one of the 2 tenants called the landlord and left a message asking how to end the tenancy. The landlord's agent replied by email the same day explaining the process. On October 3, 2012 the tenant emailed the landlord agreeing that the notice was late, but advising that the tenants were moving out of the rental unit at the end of October. The landlord's agent responded to the tenant that the notice to end the tenancy required a signature, and stating that the tenants may still be held responsible for another month of rent if the rental unit was not re-rented for November 1, 2012. Another email dated October 5, 2012 was received by the landlord on October 9, 2012 due to the long weekend. That email from the tenants had a notice to end tenancy attached with signatures of the tenants. Copies were provided for this hearing, and the notice is not dated.

The landlord advertised the rental unit on Crigslist and Kijiji, which are free on-line advertising websites, as well as on the landlord's own website, all on October 9, 2012. The rental unit was re-rented January 1, 2013.

During cross examination, the landlord's agent was questioned about replacing carpets in the rental unit, to which the landlord's agent responded that the agent was not an employee of the landlord company at that time, the landlord's agent didn't know about a need to replace carpets and there was nothing in the tenancy agreement or an addendum that spoke to new carpets. However, when showing the rental unit after this tenancy had ended, it was very clear that carpets were in need of replacing.

The landlord's agent also testified that the tenants' forwarding address was received in writing on October 31, 2012.

The landlord claims one month of rent, or \$1,150.00 for the month of November, 2012 and recovery of the \$50.00 filing fee for the cost of this application.

The landlord's witness testified to being an employee of the landlord company, and was told by the landlord's agent about the notice received from the tenants by email on October 3, 2012, and was asked for advice. The witness read the tenant's email and told the landlord's agent to send back an email, which was done, requesting a notice with signatures. Once the notice was received, which was on October 9, 2012, the landlord's agents advertised on Craigslist, Kijiji and on the company website. Also provided is a typewritten document entitled "Showings" and is a list of showings for dates and times commencing with October 11 and ending on December 8, with a move-in date for December 27. The landlord's agent testified that the rental unit was re-rented for a tenancy commencing January 1, 2013.

When questioned about new carpets being required in the rental unit, the landlord's witness testified that the first that the witness heard of new carpets was after the tenants had given their notice to end the tenancy. When asked about measuring for carpets, the witness testified that measurements were taken in the rental unit during the tenancy, but not for carpets, only for countertops. When questioned about baseboards in the rental unit, the witness testified that there were no baseboards at the commencement of the tenancy; they were gone before this tenancy began.

The witness also testified that the rental unit had been advertised prior to this tenancy at \$1,130.00 but the tenants were paying \$1,150.00 per month, and the witness does not know why. When asked how long the unit was vacant before the tenants moved in, the witness did not know.

The tenant testified to posting the notice to end tenancy on the door of the landlord's place of business on September 26, 2012 and provided a photograph of the letter attached to the door of a real estate office. The tenant didn't get a call from the landlord, so the tenant called the landlord's office and a woman answered who stated that she was new and didn't receive any notice, and advised the tenant to send it again.

The tenant further testified that another person was property manager at the outset of the tenancy but left. The tenants didn't know who to contact.

The carpets in the rental unit were in very bad shape and the property manager at the time said the owner didn't have the money to replace them, but if the tenants paid an additional \$20.00 per month for rent, the carpets could be changed right away, but none

were replaced during the tenancy. The tenants had a new baby and would not have moved into the rental unit with carpets in the shape they were in if the landlord hadn't promised to replace the carpets right away, and the tenants paid an additional \$20.00 per month to assist with that. As a result of the landlord's failure to do so, and the inability of the tenants to contact the landlord, because they didn't know who to contact, the tenants felt they could not stay in the rental unit.

The tenants have also provided a copy of an advertisement placed by the landlord for the rental address on the landlord's website which shows that the rental unit was not available for rent until December 15 at the rental amount of \$1,050.00 per month.

The tenants claim \$1,781.00, being double the amount of the security deposit (\$575.00 X 2 = \$1,150.00) and \$20.00 per month for 12 months of additional rent paid for carpets that were never replaced (\$20.00 X 12 = \$240.00), moving expenses in the amount of \$341.00, and recovery of the \$50.00 filing fee for the cost of the application.

### Analysis

With respect to the landlord's application for unpaid rent, the *Act* requires a tenant to provide to the landlord with no less than one month's written notice to end a tenancy, and that notice must be provided before the date rent is payable under the tenancy agreement. In this case, the parties agree that rent is payable on the 1<sup>st</sup> day of each month. The *Act* also states that in order to be effective, a notice to end tenancy must be dated and signed by the tenant or landlord who gives the notice. In this case, the tenant testified that the notice to end tenancy was posted to the door of the place of business of the landlord on September 26, 2012 and has provided a photograph of the notice posted on the door of a realty office. The landlord's agent disputes that any such notice was found there, and testified that the tenant had left a voice mail message on the landlord's phone on October 2, 2012 saying that the tenant needed to know how to end the tenancy. The next day, the tenant provided an email agreeing that the notice was late. The landlord's agent responded that the notice had to be in writing, which was provided on October 4, 2012 but not received by the landlord until October 9, 2012. I do not accept that the tenant provided written notice to end the tenancy prior to the end of September, 2012.

The *Act* also requires any party to do whatever is reasonable to mitigate, or reduce the loss suffered under a tenancy agreement, and for a landlord, that means advertising the rental unit for rent at a reasonable monthly amount and at a reasonable time. In this case, the landlord's agent and the landlord's witness testified that the rental unit was advertised for rent on Craigslist, Kijiji and the landlord company website commencing October 9, 2012, and the rental unit was not re-rented until January 1, 2013. The

landlord has also provided a list of showings commencing with October 11 through to December, and I am satisfied that the landlord has mitigated any loss suffered for unpaid rent or utilities.

Due to the fact that the tenancy was on a month-to-month basis, the landlord is not entitled to more than the equivalent of one month's rent. In the circumstances, I find that the landlord has established a claim for unpaid rent in the amount of \$1,150.00.

There is no evidence before me that the landlord had promised new carpets, but there is testimony of the landlord's agent that the carpets were definitely in need of replacing and testimony from the landlord's witness that the rental unit had been advertised at \$1,130.00 per month but the tenants were paying \$1,150.00 per month and the witness, an employee of the landlord company was not able to determine why. The manager with whom the tenants had originally dealt with as the landlord left, meaning that he or she was no longer employed by the landlord company. The tenant testified that the discussion about carpets at the commencement of the tenancy resulted in the manager writing \$1,150.00 per month on the agreement rather than creating an addendum.

The tenant's undisputed testimony is that the extra \$20.00 per month was for new carpets. Therefore, I find it reasonable to conclude that the tenants were promised new carpets and paid an additional \$20.00 per month to facilitate that. However, it is not up to tenants to pay for new carpeting; that is a landlord's responsibility. In the circumstances, I find that the tenants are entitled to recovery of \$260.00, for rental amounts paid from November, 2011 through to November, 2012.

With respect to the tenants' claim for moving expenses, there is no evidence before me that the tenants were unable to satisfy the terms of the tenancy agreement. I accept that the carpets were in need of replacing, and having accepted that the landlord made the promise, there is nothing to satisfy me that the tenants, who lived in the rental unit for approximately a year in its condition, ever followed up on the request for the landlord to replace carpets, nor that the carpets in their condition posed any health risks. Therefore, I find that the tenants have failed to establish that the landlord is responsible for the tenants' moving expenses.

With respect to the security deposit, a landlord is required to return it in full to the tenants or apply for dispute resolution claiming against it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants' forwarding address in writing. In this case, the landlord's agent testified that the tenants' forwarding address was received in writing on October 31, 2012 and that is also the date that the tenancy ended. The landlord filed the application for dispute resolution

claiming against the security deposit on November 12, 2012 which is within 15 days, and therefore, the tenants are not entitled to double recovery of the security deposit.

The security deposit is held in trust by a landlord on behalf of the tenant, and therefore, any award made in favour of the landlord must be set off from the amount of the security deposit. In that regard, I find that the landlord has established a claim for unpaid rent in the amount of \$1,150.00, and the tenants have established a claim as against the landlord for \$260.00 and the \$575.00 security deposit, for a total claim in favour of the landlord in the amount of \$315.00.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fee from the other.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$315.00

This order is final and binding on the parties and may be enforced.

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: March 20, 2013

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Residential Tenancy Branch

