



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, OPR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for an order of possession, for a monetary order for unpaid rent, for damages to the unit and an order to retain the security deposit and pet damage deposit in partial satisfaction of the claim.

Both parties appeared, gave 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 at the hearing.

### Preliminary Issue

At the outset of the hearing the parties agreed the tenants vacated the rental unit on October 6, 2012, and an order of possession is no longer required.

### Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent and utilities?  
Are the landlords entitled to monetary compensation for damages to the unit?  
Are the landlords entitled to retain the security deposit and pet damage deposit?

### Background and Evidence

The parties renewed a fixed term tenancy which began on May 15, 2012 and was to expire on April 30, 2013. Rent in the amount of \$1,300.00 was payable on the first of each month. A security deposit of \$650.00 and a pet damage deposit of \$167.00 were paid by the tenants.

The landlords claim as follows:

a.	Unpaid rent for September 2012 and NSF fee	\$ 505.00
b.	Unpaid rent for October 2012 and NSF fee	\$ 1,325.00
c.	Unpaid utilities	\$ 623.32
d.	Carpet replacement	\$ 1,951.04
e.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$4,454.36</b>

#### Unpaid rent for September 2012 and NSF fee

During the hearing the parties agreed the tenants owed \$480.00 for unpaid rent for September 2012. The tenants also agreed their cheque was returned by the bank for insufficient funds.

#### Unpaid rent for October 2012 and NSF fee

The landlords testified that the tenants were occupying the rental unit until October 6, 2012, and they were required to pay rent. However, the cheque issued for October 2012, rent was returned by the bank for insufficient funds. The landlords seek to recover unpaid rent in the amount of \$1,300.00 and the \$25.00 insufficient fund fee charged by the bank.

The tenants testified that they were not required to pay rent for October 2012, due to receiving a notice to end tenancy in September 2012, for unpaid rent. The tenants agreed they did not pay any rent and that their cheque was returned by the bank for insufficient funds.

The tenants testified that new tenants moved into the rental unit on October 7, 2012, and it would be unfair that they would be responsible to pay the full amount of rent for October 2012.

The landlords confirmed new tenants occupied the unit on October 7, 2012, however, they did not request the new tenants to pay any rent for October 2012.

#### Carpet replacement

During the hearing the parties mutually agreed that the tenants would pay the landlord the sum of \$500.00 for damages to the carpets.

#### Unpaid utilities

The landlords testified the tenants were in arrears of \$146.64 in 2011, for utilities, which they were required to pay to avoid the unpaid utilities being transferred to the property tax. The landlords seek to recover the amount of \$146.64 for utilities owed for 2011.

The landlords testified that the tenants did not pay the utility invoice for the billing period of January 1, 2012 to March 31, 2012, in the amount of \$211.59. The landlords stated the tenants also failed to pay the final utility invoice, in the amount of \$240.25. Filed in evidence are copies of the invoices.

The tenants agreed that she did not pay the utility invoice in the amount of \$211.59, and they did not pay the final invoice for 2012. The tenants stated they do not remember owing any outstanding utilities for 2011. The tenants stated they are concerned the landlords have mixed up the utility account numbers as there are two units with separate meters.

#### Additional agreement

The parties further agreed any monetary awarded to the landlords will be paid at the rate of \$300.00, commencing April 15, 2013, and the like sum on the 15<sup>th</sup> day of each month thereafter until paid in full.

#### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlords have the burden of proof to prove their claim.

Section 26 of the Residential Tenancy Act states:

**26** (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Unpaid rent for September 2012 and NSF fee

In this case, the tenants acknowledged they did not pay the full amount of rent for September 2012, which was due under the term of the tenancy agreement and that their cheque was returned for insufficient funds. Therefore, I find the tenants have breached section 26 of the Act when they failed to pay rent and the insufficient fund fee due under the tenancy agreement. I find the landlords are entitled to recover unpaid rent for September 2012, and the insufficient fund fee in the amount of **\$505.00**.

Unpaid rent for October 2012 and NSF fee

In this case, the tenants were occupying the rental unit on October 1, 2012, when rent was due under the terms of the tenancy agreement and their rent cheque was returned by the bank for insufficient fund.

The parties agreed the tenants vacated the rental unit on October 6, 2012, and new tenants commenced living in the unit on October 7, 2012. The evidence of the landlords was the new tenants did not pay any rent for October 2012.

While, I find the tenants have breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and when they failed to pay the insufficient fund fee. However, I also find the landlords failed to take reasonable steps to mitigate the loss of rent as required by section 7(2) of the Act, when they did not require the new tenants to pay any rent for October 2012.

As a result, I find the landlords are entitled to recover unpaid rent for the six days that the tenants occupied the unit at a per diem rate of \$42.73 per day. The landlords are also entitled to recover the \$25.00, for the insufficient fund fee charged by the bank. Therefore, I find the landlords are entitled to recover unpaid rent for October 2012, and the insufficient fund fee in the amount of **\$281.38**.

Unpaid utilities

In this case, the tenants agreed they did not pay the utility invoice for the billing period of January 1, 2012 to March 31, 2012, in the amount of \$211.52. The invoice submitted as evidence indicates the account number as XXXX00 and support the amount. Therefore, I find the landlords are entitled to recover the utility invoice in the amount of **\$211.52**

The tenant further agreed they did not pay the utility invoice for the last billing period they were residing in the rental unit. However, the tenants claimed not to have seen a copy of the invoice. The invoice submitted as evidence indicates the account number as XXXX01 and does not support the landlord's testimony to the actual amount owed.

However, the tenants have admitted they did not pay any money for this utility invoice and as a result of that admission, I find the landlords are entitled to a nominal award based on the previous utility bill, which has been submitted as evidence and it would be reasonable to conclude that the consumption of the utilities would be similar. Therefore, pursuant to section 67 of the Act, I grant the landlords compensation in the amount of **\$211.00**.

The landlords are claiming unpaid utilities in the amount of \$146.64 for 2011. The evidence of the tenants was they do not remember being in any utility arrears for that particular year. The documentary evidence of the account reconciliation is not readable due to the font size submitted. Also, there was no invoice submitted for any of the utility invoices for 2011. As a result, I find the landlords have provided insufficient evidence to support that the tenants were in utilities arrears for 2011, and this portion of the landlords' claim must be dismissed.

#### Carpet replacement

The parties entered into a settlement agreement regarding the carpets, and the parties agreed the tenants would pay the landlords the sum of \$500.00. Therefore, I find the landlords are entitled to recover damages to the carpet in the amount of **\$500.00**.

I find that the landlords have established a total monetary claim of **\$1,758.90** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlords retain the security deposit of \$650.00 and pet damage deposit of \$167.00 in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$941.90**.

The parties agreed during the hearing the tenant would pay the balance due by a payment schedule.

The tenants are required to pay the sum of \$300.00 per month commencing April 15, 2013 and the like sum on the 15<sup>th</sup> day of each month thereafter until the balance due is paid in full. If the tenants miss any payments the balance owed immediately becomes payable to the landlords and the landlords may file the monetary order in the Provincial Court (Small Claims) and enforced as an order of that Court.

#### Conclusion

The landlords are granted a monetary and may keep the of the security deposit in partial satisfaction of the claim.

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 08, 2013

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Residential Tenancy Branch

