



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNSD MNDC FF

### Introduction

This hearing dealt with applications by the landlord and the tenants. The landlord applied for a monetary order and an order to retain the security deposit in partial compensation of the claim. The tenants applied for double recovery of the security and pet deposits and further monetary compensation. The hearing first convened on March 7, 2013, and reconvened on April 5, 2013. The landlord and three tenants participated on both dates of the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?  
Are the tenants entitled to double recovery of the security and pet deposits?  
Are the tenants entitled to further monetary compensation as claimed?

### Background and Evidence

The tenancy began on May 30, 2012 as a fixed-term tenancy to end on April 30, 2013. The monthly rent was \$1600, payable in advance on the first day of the month. At the outset of the tenancy, the tenants paid the landlord a security deposit of \$800 and a pet deposit of \$400. The landlord and the tenants carried out a joint move-in inspection and completed a condition inspection report on May 30, 2012.

The tenants failed to pay their rent in November 2012, and the landlord received an order of possession pursuant to a notice to end tenancy for unpaid rent. The tenancy ended and the tenants moved out on November 30, 2012. On that date, the landlord and tenants carried out a move-out inspection and completed the move-out inspection report, and the tenants provided their forwarding address in writing. The landlord applied to keep the security and pet deposits on December 12, 2012.

### *Landlord's Claim*

The tenants acknowledged that they owed the landlord for the following items: \$323.01 for hydro bill; \$44 for water bill; \$50 for kitchen countertop; \$70 for suite cleaning; \$25 for October 2012 late fee; and \$23.46 for blinds. The tenants disputed the remainder of the landlord's claim.

The disputed items of the landlord's claim are as follows:

- 1) \$3200 for lost revenue for December 2012 and January 2013, and \$300 for February through April 2013 – the landlord began advertising the rental unit on November 18, 2013, but she was unable to re-rent the unit until February 1, 2013. The landlord had to lower the rent to \$1500 per month, and has claimed the \$100 difference per month for the last three months of the tenants' lease. The landlord submitted copies of some rental ads and further evidence of advertising and showing the unit. The landlord asked \$1600 for rent until January 6, 2013, when she lowered the advertised rent first to \$1575, then \$1550, and finally \$1500.
- 2) \$800 for liquidated damages, as per the tenancy agreement – the landlord stated that she spent considerable time to re-rent the unit.
- 3) \$43.67 for fridge shelf – the landlord stated that a fridge shelf was broken at the end of the tenancy.
- 4) \$144.48 for carpet cleaning – the landlord stated that the tenants' dogs urinated on the carpet in the sun room and office, so those carpets had to be professionally cleaned. The landlord submitted a receipt for carpet cleaning.
- 5) Estimated \$50 for paint – the landlord stated that there were pet scratches on the kitchen door and paint touch-ups were required on walls. The landlord submitted photographs of this damage and stated that her husband could do the work.
- 6) \$72 for repairs to washing machine – the landlord stated that the washing machine was purchased in 2005 and was repaired in May 2012, just before the tenants moved in. The washer stopped working on October 21, 2012, and the landlord checked it the following day. On October 25, 2012 the repair person ordered a new part, and advised the tenants to only use the small load function in

the meantime. The landlord stated that the tenants must have ignored this advice and damaged the machine. The landlord submitted a photograph she took showing the machine set on "large load."

The tenants' response to these items was as follows.

The tenants stated that the landlord breached the lease on October 15, 2012 by failing to properly repair the roof of the rental unit, and then a leak occurred. The tenants submitted photographs to show that there was a hose running from the ceiling to the washing machine at the outset of the tenancy, which shows that the landlord was aware that there was a problem. The tenants stated that the landlord did subpar repairs in the rental unit, and with the leak and improper repairs nobody would rent the unit in that condition. The tenants also submitted a letter from a construction contractor who viewed the rental unit and gave his opinion that the rental unit "contravenes building codes to an appalling degree" and "would be condemned upon municipal inspection." The tenants submitted other photographs showing poorly-done repairs such as "an outdoor staircase railing braced with what appears to be a broom handle, some thick gauge wire, and some screws." The tenants stated that the amount of time the landlord had to spend showing the unit was because it was not rentable. The tenants stated that they therefore are not responsible for lost revenue or the liquidated damages amount.

The tenants stated that they only had one dog, not three, and that dog did not have accidents. Therefore, the tenants are not responsible for the cost of carpet cleaning. The tenants stated that the paint in the rental unit was very low-quality, and the excess moisture in the unit made the paint peel. The tenants stated that the landlord did not provide any proof that previous tenants did not damage the washing machine. The agitator was broken and there were worn-out supports, showing the age of the machine.

#### *Tenants' Claim*

The tenants have claimed double recovery of the security and pet deposits, in the amount of \$2400, as well as \$2400 for loss of use and quiet enjoyment.

The tenants stated that the landlord breached the tenancy agreement on October 15, 2012, when heavy rainfall caused a leak in the roof. The landlord was aware that there was a leak, as evidenced by the drainage tube that the landlord had installed in the ceiling of the laundry room. The landlord did subpar repairs on the ceiling after the leak occurred, by covering the damaged ceiling area with plywood and sealing it with caulking.

The tenants stated that the rental unit did not have proper ventilation, as there was no fan in the bathroom, and the only possible ventilation was a skylight that was bolted shut. On November 12, 2012 additional leaks came through the skylight and the previous leaking area. Moisture problems began causing mould to develop. The tenants informed the landlord, who suggested that the tenants open a window. This was not an acceptable solution in the winter.

The tenants stated that the washing machine in the rental unit broke down because of a worn-out agitator. The tenants informed the landlord of the problem, and the tenants had to go 14 days without the washing machine working properly.

The tenants provided photographs to support their claim, including photos of the ceiling leak in the laundry room, the repair to the ceiling, the skylight in the bathroom and the mould that had developed on the walls, and also submitted the letter containing the opinion of the construction contractor.

The landlord's response to the tenants' claim for compensation for loss of use and quiet enjoyment was as follows.

The landlord's husband did the repairs to the rental unit, and he is an architect with many years of experience. The landlord denied ever failing to maintain the rental unit. The landlord attended to repair the leak and the washing machine as soon as informed of the problems. The tenants did not incur any inconvenience or any loss of use of any of the rooms after November 1, 2012, as there were no leaks after that date. The landlord stated that the opinion letter submitted by the tenants should not be viewed as an expert opinion, as the author of the letter is a cabinet maker, not a structural engineer.

The landlord stated that the tenants never showed the landlord any mould. If any mould or other moisture problems occurred, it was because the tenants didn't want to spend money to properly heat the house, and they used space heaters instead of buying heating oil and using the furnace.

## Analysis

### *Landlord's Claim*

The landlord is entitled to \$535.47 for the items that the tenants did not dispute.

I find that the landlord is also entitled to the liquidated damages amount. The tenants knowingly entered into the fixed-term tenancy and agreed at the time of signing the agreement that if they ended the tenancy before the end of the fixed term, they would be responsible for the liquidated damages amount. The tenants breached the Act when they withheld rent for November 2012, and in so doing they brought about the end of the tenancy. The landlord is therefore entitled to \$800 for liquidated damages.

I find that the landlord is not entitled to the amount claimed for lost revenue. I accept the evidence of the tenants, particularly the photographic evidence, that the rental unit was in a poor state of repair, and it would have been difficult for the landlord to re-rent the unit. I further find that although the landlord began advertising the unit in November 2012, she did not lower the rent until January 6, 2013, nearly two months later, and she therefore did not take sufficient reasonable steps to mitigate the lost revenue.

I find that the landlord is not entitled to any of the other amounts claimed. The landlord did not provide evidence of the age of the fridge or any photographs of the broken fridge shelf; nor did she provide evidence that the shelf broke through the tenants' misuse. The landlord did not provide sufficient evidence to show that the sun room and office carpets were damaged by pet urine and needed to be professionally cleaned. The landlord did not provide sufficient evidence to establish that the touch-up paint was required due to damage by the tenants or their pets. The landlord did not provide sufficient evidence to show that the washing machine stopped working properly due to misuse by the tenants, rather than by age and worn-out parts.

### *Security and Pet Deposits*

The landlord applied in time to keep the security and pet deposits, and the tenants are therefore not entitled to double recovery of the deposits. I will address the deposits below, in the conclusion of this decision.

### *Tenants' Claim for Loss of Use and Quiet Enjoyment*

I find that the tenants are not entitled to compensation for loss of use or quiet enjoyment. The tenants inspected the rental unit at the outset of the tenancy and signed

the move-in condition inspection report, agreeing to the condition of the rental unit. The tenants could have applied for orders for repairs at the time that repairs were required, but instead the tenants chose to withhold their rent and effectively end their tenancy. The tenants did not provide sufficient evidence to show what loss they suffered for the two weeks that the washing machine did not work properly. Nor did they show any other loss of use of the rental unit. The tenants did not deny that they chose to use space heaters rather than use the furnace, and they therefore may have caused any moisture or mould problems that occurred.

### *Filing Fees*

As neither party was fully successful in their application, I decline to award recovery of their respective filing fees to either party.

### Conclusion

The landlord is entitled to \$1335.47. I order that the landlord retain the pet and security deposits of \$1200 in partial compensation of this amount, and grant the landlord an order under section 67 for the balance due of \$135.47. This order may be filed in the Small Claims Court and 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: April 22, 2013

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Residential Tenancy Branch

