



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNSD and FF

### Introduction

This hearing was convened on an application made by the landlords on April 22, 2013 seeking a monetary award for unpaid rent, cleaning costs, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

At the commencement of the hearing, I advised the landlords that the *Act* does not make provision for ordering reimbursement for mailing, photography and copying in preparation for the hearing and dismissed those claims.

### Issue(s) to be Decided

Are the landlords entitled to a Monetary Order for the claims submitted?

### Background, Evidence and Analysis

This tenancy began on February 22, 2013 and ended on April 12, 2013. Rent was \$950 per month and the landlords hold a security deposit of \$475 paid on February 15, 2013.

The rental agreement was for a fixed term of over one year, set to end on March 31, 2014.

The landlords' application was based on a 10-day Notice to End Tenancy for unpaid rent served in person on April 3, 2013 for the \$950 rent due on April 1, 2013 which the parties agree remains unpaid.

However, during the hearing, the parties concurred that the landlords had served the tenants with a one-month Notice to End Tenancy on March 12, 2013 after having received an order from the municipality that the suite was illegal and the rental building had to be restored to conforming status by May 1, 2013.

The landlords have also submitted photographic evidence and a paid receipt for \$87.50 in support of a claim for 3.5 hours to cleaning the rental unit after the tenants vacated on April 12, 2013. The parties agree that the tenants did not respond to the landlords' request that they attend the move-out condition inspection.

### Analysis

Section 26 of the Act provides that tenants must pay rent when it is due irrespective of any non-compliance on the part of the landlord. I find that the landlords were entitled to issue the 10-day notice on April 3, 2013 and would have qualified for an Order of Possession if the tenants had not vacated.

However, with respect to the monetary claim, I find that the tenants' breach followed and was a consequence of a breach by the landlords in entering in to a fixed term rental agreement when they knew, or ought to have known, that the suite was non-conforming and vulnerable to a municipal order at any time. In other words, the fixed term component of the rental agreement constituted a misrepresentation and the landlords breached a material term of the agreement in serving the notice of March 12, 2013.

Therefore, I find that the tenants are responsible for the rent only for the 12 days during which they occupied the rental unit.

On the basis of the photographic evidence and receipt, and the tenants' failure to participate in the move-out condition inspection, I further find that the landlords are entitled to recover the cleaning costs as claimed.

As this dispute arose from the landlord's initial breach, I decline to award the filing fee for this proceeding.

As the sum of the 12-days rent plus cleaning costs differs only insignificantly from the security deposit, as authorized by section 72 of the *Act*, I hereby order that the landlords may retain the tenants' \$475 security deposit as full resolution of this dispute.

### Conclusion

The landlords are authorized to retain the tenants' \$475 security deposit in satisfaction of 12-days rent for April 2013 and \$87.50 in cleaning costs.

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: May 07, 2013

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Residential Tenancy Branch

