



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNSD, MNDC, FF, SS

### Introduction

This hearing was convened by way of conference call in response to the landlords application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The landlord also applied for an Order for Substitute Service however the landlord no longer requires this as the male tenant was served the hearing documents, by the landlord in accordance with section 89 of the *Act*, in person on May 01, 2013; The female tenant has moved out of the country, no forwarding address has been provided, and that tenant has not been served.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant deemed served, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit?
- Is the landlord permitted to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testifies that this tenancy started on September 01, 2012. This was a fixed term tenancy which was not due to expire until August 31, 2013. Both tenants were named on the tenancy agreement as co-tenants and a copy of this has been provided in the landlord's evidence. Rent for this unit was \$1,975.00 per month due on the first of the month. The tenants also agreed to pay half the utility bills. The security deposit was \$987.50 however the tenants only paid \$150.00 of this in increment payments. The tenants abandoned the rental unit on or about March 23, 2013 and the male tenant informed the landlord by e-mail that he was moving from the unit on March 31, 2013 because his wife had moved to the States.

The landlord testifies that she held postdated cheques for the rent from the tenants and as the rental unit was not rented again until May 15, 2013, after it was advertised by the landlord, the landlord attempted to cash the rent cheque for April and May. The landlord testifies that both rent cheques were returned due to insufficient funds.

The landlord therefore seeks to recover a loss of rent for April of \$1,975.00 and a loss of rent up to May 15 of \$987.50. The landlord also seeks to recover the sum of \$50.00 for the two NSF cheques. The landlord testifies that the tenancy agreement provides for a fee of \$50.00 to be charged for NSF cheques however the landlord now realizes that the maximum amount allowed is \$25.00 per month.

The landlord testifies that the tenants have failed to pay utilities. The amount outstanding for Fortis Gas from January 17 to May 15 has been calculated at \$138.27. The landlord had miscalculated on her claim and applied for \$104.23. This has been amended. The outstanding amounts for BC Hydro from December 14 to March 31 are \$376.74. These calculations have been worked out on the tenants 50 percent share of each bill. The total amount of outstanding utilities is \$515.01. Copies of the bills have been provided in evidence to the tenant and this office. The landlord was not able to give them to the tenants any sooner as no forwarding address has been provided.

The landlord testifies that the tenants failed to leave the carpets in a clean condition at the end of the tenancy. The carpets had been cleaned prior to the tenants moving into the unit and the carpets were left stained with nail polish and other substances that could not be removed. The landlord testifies she hired a carpet cleaning machine to clean the carpets herself and seeks to recover the cost of this at \$40.42. A receipt has been provided in evidence.

The landlord testifies that the tenants failed to leave the rental unit in a clean condition at the end of the tenancy the walls of the unit also sustained some damage which had to be filled, sanded and repainted and a switch cover was left broken. The landlord seeks to recover the cost for cleaning supplies, garbage bags and paint and has provided the following receipts:

Home Depot - \$90.25

Home Depot – \$8.92

Rona – \$12.05

Canadian Tire - \$34.69

Real Canadian superstore – 10.94

Real Canadian Superstore- \$25.53

Costco - \$22.99

The landlord testifies that the tenants also abandoned some personal belongings including a broken bookcase which was removed to the transfer station at a cost of \$10.00. A receipt for this has been provided in evidence.

The landlord testifies that at the start of the tenancy the landlord had the grass cut and then the tenants agreed to take over this work of cutting grass and weeding. At the end of the tenancy the tenants had not kept the garden work up to date and the landlord had to pay \$40.00 to a home services company to have the grass cut and weeding done. The landlord has provided a copy of the receipt in evidence. The landlord also seeks to recover the cost for having a key to the unit of \$6.70 as the tenants were provided with three keys at the start of the tenancy and only one key was returned. A receipt for this has been provided in evidence. The landlord also seeks to recover the cost of having photographs done for the evidence packages of \$27.65.

The landlord did most of this work herself with her husband and seeks to recover their labour costs to clean the unit and make repairs. The landlord seeks \$20.00 per hour for 28.75 hours work to a total sum of \$575.00.

### Analysis

The tenant that was served with the hearing documents did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and sworn testimony before me.

I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;

- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I am satisfied with the landlords claim that this was a fixed term tenancy which was ended by the tenants when they abandoned the rental unit at the end of March, 2013. I am also satisfied that the landlord attempted to mitigate the loss by re-renting the unit as quickly as possible. I therefore uphold the landlord's claim for a loss of rental income for April of **\$1,975.00** and for the first half of May of **\$987.50** as the tenants breached the lease agreement by ending the tenancy before the end of the fixed term.

I am satisfied that the tenants failed to pay their share of utilities. I am also satisfied that the landlord was unable to provide copies of the utility bills to the tenants in any other way as no forwarding address was provided. As the male tenant has now received copies of these bills I find in favor of the landlords claim to recover unpaid utilities of **\$515.01**.

I am satisfied that the tenancy agreement informs the tenants that the landlords will apply a charge for any cheques that are returned due to insufficient funds (NSF). The landlord has a right to try to cash the rent cheques provided up to the time the unit was

re-rented on May 15, 2013. As these cheques were NSF the landlord is entitled to claim a maximum of \$25.00 per month for two months to an amount of **\$50.00**.

With regard to the landlords claim for damages and cleaning; the landlord has met the burden of proof that the tenants failed to leave the rental unit clean including the carpets. The tenants also left some damage to the walls in the unit and left personal belongings in the unit. The tenants did not cut the grass or weed the yard and failed to return keys to the unit. The landlord has provided evidence of the cleaning and damage and abandoned belongings and for all other costs as indicated above to rectify this to a total sum of **\$302.49**. I therefore find in favor of the landlords claim to recover this amount from the tenant.

I am also satisfied that the landlord mitigated the loss of cleaning and repairs by doing most of this work. I therefore find in favor of the landlords claim for labour costs of **\$575.00**.

With regard to the landlords claim for the cost for producing photographic evidence; there is no provision under the *Act* for costs of this nature to be awarded to a party. I therefore must dismiss this section of the landlords claim without leave to reapply.

As the landlord has been largely successful with her claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant. A Monetary Order has been issued to the landlord for the following amount pursuant to s. 67 and 72(1) of the Act:

Loss of rent	\$2,962.50
Unpaid utilities	\$515.01
NSF fees	\$50.00
Cleaning and damages including labour	\$877.49
<b>Subtotal</b>	<b>\$4,405.00</b>
Filing fee	\$50.00
Less security deposit	(-\$150.00)

<b>Total amount due to the landlord</b>	<b>\$4,305.00</b>
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### Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,305.00**. The order must be served on the respondent who was served with the hearing documents and is enforceable through the Provincial Court as an order of that Court.

The other respondent has not been served and will not be named on the Monetary Order. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

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: July 25, 2013

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Residential Tenancy Branch

