



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. Both parties appeared and had an opportunity to be heard.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order and, if so, in what amount?

### Background and Evidence

This tenancy commenced June 15, 2011. The parties signed a one-year fixed term agreement for the period June 15, 2011 to June 14, 2012. The monthly rent of \$1100.00 was due on the 15<sup>th</sup> day of the month. The tenant paid a security deposit of \$550.00 and a pet damage deposit of \$275.00. The tenancy agreement specifically set out that the tenant must give one month's written notice to end the agreement at the end of the term and that "Garbage collection is the responsibility of the tenant (excessive amounts of garbage are not to be stored on site.)"

A move-in inspection conducted and a move-in condition inspection report was completed. The landlord testified that significant renovations had been made to this home in 2011.

The parties subsequently renewed the agreement upon the same terms and conditions for the period June 15, 2012 to June 14, 2013.

In March of 2013, when he paid the rent, the male tenant told the landlord's employee that they would not be renewing the tenancy agreement. The employee reminded the tenant that written notice to end tenancy was required and they would have to arrange for pictures to be taken so the landlord could advertise the unit. The male tenant said he would talk to the female tenant about this. Written notice to end tenancy was never given to the landlord. The female tenant thought that proper notice had been given in March.

On June 13 the landlord's employee saw the tenants at the side of the road covering a trailer with a tarp. She called the male tenant who confirmed they were moving out. The landlords filed this application for dispute resolution on June 14, served it on the tenants, waited for a week for the keys, and then changed the locks.

When the landlord took possession of the house he found it in very poor condition. The basement was full of trash; the home had not been properly cleaned; there were large amounts of garbage on and below the deck and around the yard; and the deck covering was stained.

The landlord gave detailed evidence about what they found and the time it has taken to clean the property. The landlord's staff has been working at the clean-up between other jobs so as of the date of the hearing the cleaning and repairs had not been completed.

The female tenant lived in this home with four teenagers, currently aged 21, 19, 17 and 15. Her husband, the male tenant, actually lives elsewhere, but has been spending a lot of time at the house to supervise one son who is a suicide risk, while the female tenant is at work.

The move-out was very difficult for the tenants. They both have significant health and mobility issues. The male tenant said he was only able to help with the move for one day. His efforts on that day made him so ill he could not do anything else. The female tenant had a broken finger. She testified that the teenagers were not helpful, which added to the stress of the move. She had relied on them to empty the rubbish from the basement, but when she saw the landlord's photographs she discovered they had not.

The female tenant testified about the cleaning she did do but also acknowledged there were items she did not get to.

The tenants testified that a flood in the basement in January of 2013 was a principal reason for the mess in the basement and on the deck. They testified that one day three to six inches of water filled basement and disappeared the next. The flood left many boxes wet. When it came time to move out the female tenant said the wet boxes were too heavy for her to carry.

The tenants reported the flood to the landlord when they paid the rent that month. Both the landlord's employee and the male tenant testified that when asked if the tenants needed anything, such as heavy duty dryers, the tenant declined, saying they were using heaters.

The parties gave conflicting evidence about maintenance issues during the tenancy. The tenants never reduced their requests for maintenance to writing nor did they ever file an application for dispute resolution asking for a repair order.

The landlord claims \$1480.30 for cleaning calculated as follows:

Removal of Garbage and Furniture from Basement		
Labour	10 hrs @ \$25.00/hour	\$250.00
Disposal fee for Garbage	.37 tonnes @190.00/tonne	\$ 70.30
Construction Dumpster	1 ea @ \$160.00 ea	\$160.00
Cleaning Inside of House	32 hours @\$25.00/hour	\$800.00
Cleaning Deck and Yard	8 hours @\$25.00/hour	\$200.00

The landlord also claims rent for the period June 15 to July 14 in the amount of \$1100.00.

#### Analysis

The term of the tenancy agreement which stated that the tenant must give written notice to end tenancy reflected the provisions of section 47 of the *Residential Tenancy Act*. The tenants should have given written notice to end tenancy. As a result of their failure to do so, they are responsible for one month's rent.

Section 7(2) of the *Act* requires any landlord or tenant who claims compensation for damage or loss from the other to do whatever is reasonable to minimize the damage or loss. Normally where a landlord is claiming unpaid rent as a result of a tenant's failure to give proper notice to end tenancy, the landlord is expected to start advertising and showing the unit immediately as part of the effort to re-rent the unit as soon as possible. However, in this case, the home was left in such poor condition that the landlord could not show the unit or re-rent it immediately.

The tenants' various complaints about maintenance issues are generally irrelevant to this proceeding.

If a tenant thinks their unit is not being properly maintained, at least two alternatives are available to them. The first is to apply to the Residential Tenancy Branch by way of an application for dispute resolution for an order requiring the landlord to make certain repairs and/or reducing the rent until the repairs are completed.

If a tenant thinks the situation is serious enough to end the tenancy for breach of a material term of the tenancy agreement the tenant must give the landlord written notice of the breach and if the landlord does not correct the situation within a reasonable time the tenant may end the tenancy.

The tenants did not take either of these steps; they did not even reduce their requests for maintenance to writing. Further, even when help was offered after the basement flooded, they declined. If moisture was a problem in the basement, the dryers offered by the landlord would have been most helpful.

After reviewing the evidence I am satisfied that the landlord's claim of 50 hours for clean-up is very fair. The hourly rate claimed by the landlord is the rate usually charged for cleaning and garbage removal. Finally, I accept the landlord's evidence that the dumpster cost \$160.00 and disposal fees were \$70.30.

I find that the landlord has established a total monetary claim of \$2630.30 comprised of unpaid rent in the amount of \$1100.00; clean-up costs in the amount of \$1480.30; and the \$50.00 fee paid by the landlord for this application. Pursuant to section 72 I order that the landlord may retain the security deposit of \$550.00 and the pet damage deposit of \$275.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 for the balance due of \$1805.30.

#### Conclusion

A monetary order in favour of the landlord has been made. If necessary, 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: August 28, 2013

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Residential Tenancy Branch

