



# 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 the landlords Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by one of the landlords; her witness; and one of the tenants

### Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for lost revenue due to a short notice; liquidated damages; for compensation for damage and cleaning the rental property; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlords provided a copy of a tenancy agreement signed by the parties on April 23, 2012 for a 2 year fixed term tenancy beginning on July 1, 2012 for monthly rent for the months between April and September of \$1,500.00 and months between October and March of \$1,400.00. The parties agree the tenancy ended on April 30, 2013.

The tenancy agreement stipulates the tenants must pay a security deposit of \$750.00 and a pet damage deposit of \$750.00. The agreement also included a 12 page addendum with 30 clauses. Additional clauses include a requirement to have the rental unit professionally cleaned at the end of the tenancy and the hourly rate that would be charged if not professionally cleaned; requirements for the tenant to care for the yard including how the yard should be prepared at the end of the tenancy; and a liquidated damages clause where the parties agree to amount of \$1,500.00.

The landlords provided into evidence a copy of the tenants' notice to end the tenancy, dated March 27, 2013, in which they indicate that due to the male tenant's health concerns they would be ending tenancy and moving out of province. The notice also

indicates the utilities were higher than the tenants expected prior to the start of the tenancy.

The landlords submit that they began advertising immediately in local papers; by using a sign on the property and online on a couple of websites. The landlords submit they were able to re-rent the property effective for June 1, 2013. The landlords seek lost revenue for the month of May 2013 and liquidated damages.

The landlord testified that they made the estimate for liquidated damages to be the costs with advertising; the time and effort assessing new potential tenants; the costs of running the property and ensuring it is clean while looking for new tenants.

The parties agree that as a result of a family emergency the tenants had been delayed in their move out and moved out later in the day than was originally decided. The parties also agree that because of the family emergency the tenants had an agent represent them at the move out condition inspection.

The agent signed the landlords' move out Condition Inspection Report indicating that she agreed with the report's representation of the condition of the rental unit. The tenant testified that her agent thought she was only signing the document to confirm that she had been present during the inspection and watched the landlord complete the assessment.

The landlords make the following claims based on the Condition Inspection Report:

Description	Amount
House Cleaning	\$360.00
Carpet Cleaning	\$78.75
Cellar floor cleaning	\$205.47
Landfill fees	\$5.00
Repair cellar floor	\$1194.78
Replacement of light bulbs and smoke detector	\$40.50
Yard cleanup	\$80.00
Gold mirror removed from house	\$150.00
Stove drip pan replacements	\$40.22
Repaint bathtub	\$250.00
<b>Total</b>	<b>\$2404.72</b>

The tenant acknowledged taking the mirror in error and the parties discussed possible arrangements to get the mirror back to the landlords immediately following the hearing.

The landlords have provided either receipts or documented estimates for all of the above claims with the exception of the need to repaint the bathtub which they indicate was provided verbally.

The tenant submits that the only thing they had stored in the cellar room in the basement was garbage and there is no way that that could have caused any damage to the flooring that would require such expensive repairs.

The tenant testified that she had hired a professional cleaner for some of the work but that she could no longer find her receipt. She submits that they the damage to bathtub began at the start of the tenancy and there was nothing that they could do to stop the bathtub paint from chipping away.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

As the tenant has not provided any evidence that the landlords breached a material term of the tenancy or that the tenants advised the landlords of such a breach and gave the landlords time to correct the breach, I find the tenants were bound by the requirements of Section 45(2) to end the tenancy.

As such, the earliest the tenants could end the tenancy was the date noted in the tenancy agreement or June 30, 2014. Therefore, I find the tenants are responsible for the payment of rent until the end of the fixed term subject only to the landlords' obligations to mitigate their losses.

I am satisfied the landlords took reasonable steps to re-rent the property and in an appropriate time frame. As such, I find the landlords were able to re-rent the unit for June 2013 limiting the tenants' financial obligations for the payment of rent to the month of May 2013.

In addition, I am satisfied that the tenancy agreement allowed for the payment of liquidated damages to the landlords in the event the tenants ended the tenancy prior to the end of the fixed term. I am satisfied the amount of liquid damages is based on a genuine pre-estimate of the costs associated with re-renting the unit. I find the landlords are entitled to the liquidated damages in the amount claimed.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Based on the Condition Inspection Report and photographic evidence provided by the landlords and the tenancy agreement, I find the tenants have failed to establish that she had the rental unit professionally cleaned.

Despite the tenant's testimony that her agent thought that she was signing the Condition Inspection Report merely acknowledging her presence, the document is very clear right above the agent's signature that she is agreeing that it represents the condition of the unit. As such, I find the Report is an accurate depiction of the condition of the rental unit.

In the absence of any evidence from the tenants that they had the rental unit professionally cleaned, I find the tenants failed to comply with this requirement from the tenancy agreement.

As a result, I find that the landlords have established the tenants failed to comply with the requirements under Section 37 and have established the value of the costs to repair and clean the property. I find the landlords are entitled to their full claim for these costs with the following exceptions:

1. As there is no record in the Condition Inspection Report specific to the condition of the floor in the cellar at the start of the tenancy and the photographic evidence does not provide clear evidence to establish damage, I find the landlord cannot establish that the damage to the flooring was caused during the tenancy, I dismiss this portion of the landlords' claim; and
2. In relation to the landlord's claim for repairs to the bathtub, I find from the landlords' testimony and the photographic evidence that the damage to the tub is normal wear and tear for a bathtub that has been painted over and not re-glazed. In addition the landlord has provided no documentary evidence to establish a cost to repair the tub. I dismiss this portion of the landlords' claim.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$4,059.94** comprised of \$1,500.00 lost rent; \$1,500.00 liquidated damages; \$360.00 cleaning; \$78.75 carpet cleaning; \$205.47 cellar floor cleaning; \$5.00 landfill

fees; \$40.50 replacement light bulbs and smoke detector; \$80.00 yard clean up; \$40.22 stove drip pans; \$150.00 replacement of gold mirror and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$1,500.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,559.94**.

I also order that should the tenant return the landlords' mirror the landlords must deduct \$150.00 in partial satisfaction of this claim.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 30, 2013

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Residential Tenancy Branch

