



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR RR MNDC MNSD FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 45 and 67 for unpaid rent for ending the tenancy without notice ;
- b) A monetary order for compensation for damages;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- e) To find the tenants had good reason to break the lease and end the tenancy pursuant to section 32;
- f) A monetary order or rent rebate as compensation for material and repairs to the property and for moving expenses;
- g) To refund the security deposit; and
- h) To recover the filing fee for this application.

### **SERVICE**

Both parties attended the hearing and each confirmed receipt of each other's Application for Dispute Resolution by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that rent is owed and that damage was caused by these tenants, that it is beyond reasonable wear and tear and the amounts owed for rent and repair or replacement? Is he entitled to recover the filing fee for this application?

Has the tenant proved on the balance of probabilities that they should not be responsible for the rental loss of the landlord due to them breaking the lease and that they are entitled to a rent refund and other compensation including a refund of their security deposit and moving expenses? Are they entitled to recover filing fees for the application?

**Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced on April 1, 2013 on a fixed term lease to September 30, 2013, that rent was \$1150 a month and a security deposit of \$575 and a pet damage deposit of \$100 were paid on March 31, 2013. It is undisputed that the son of the female tenant had occupied the lower suite of the home for about 8 months on a separate lease prior to her moving in to the upper suite and that he rented the garage and did metal working and fabricating and fixing of vehicles. The photographs provided by the tenant show that the garage is attached to the home, the landlord says it is under the living room but the tenant says it is only under a porch. The landlord said the upstairs tenants often used the garage to access their unit so are responsible for the condition of the garage door and garbage too.

The landlord states that he received a letter on May 27, 2013 (in evidence) from the male tenant saying he was breaking the lease due to a black mould infestation and then the male tenant called that day and said he was not paying rent. The letter states that it also is because the landlord ignored their verbal agreement to fix the back deck. Apparently the son who lived downstairs also left without paying the last month's rent but that is not part of this case as the evidence is that there were separate leases for each suite.

The female tenant said she had serious health issues due to black mould in the suite and the male tenant said he suffered from the same throat and breathing problems when he stayed there when in town. They said they were unable to get any inspections done because their municipality said it does not have the manpower and private inspections for black mould are too expensive. The landlord said they could never show him the mould and that they are smokers and the son was welding and fabricating metal underneath the living room so if the tenants had health issues, they were likely caused by these habits. The landlord provided two letters in evidence from his brother and another from his wife. Both say there is no mould in the home, that the female tenant was unable to show any mould to the landlord when he asked and the brother said he has asthma and would have had an allergic reaction to mould when he was inside the home on many occasions. The brother and the landlord were there on June 10, 2013 to

repair or replace the back deck and the brother commented that the female tenant seemed well and happy about 1 1/2 hours after they arrived, although initially she had complained about mould making her sick. The landlord said he had told them they could move out with a proper one month's notice to end the tenancy if they desired.

In evidence is a condition inspection report signed at move-in by both parties but only by the landlord at move-out. He said he was unable to do an inspection with the tenants because they took off without notice in late June 2013 and left no keys. The female tenant says she saw the place in the dark, signed a blank move-in report and the landlord filled it in later and that she did not realize the condition of the home for someone was living there when she looked at it in May 2013. She said she never visited her son in his downstairs unit for it was "disgusting" with his hoarding and welding so she was not aware of the true condition of the home.

The landlord claims as follows:

\$1150: July rent for no notice to end the tenancy.

\$145: damaged baseboards of unknown age when the tenants removed them to paint.

The tenants say they were not damaged and there is paint left to repaint them.

\$75: for missing blades of a ceiling fan of unknown age in the kitchen. The tenants say the blades are still there with screws in the cupboard; they had just removed them to paint.

\$250 for a missing deck rail of unknown age. The tenants deny taking that.

\$300: to repaint the walls which had been painted two years ago. The tenants say there is paint that they left to do the walls.

\$1200: for a damaged garage door. The tenants say they did not rent the garage or damage the door.

\$20: for missing vents of unknown age from the kitchen and bathroom.

\$40: for one box of laminate stolen. The landlord says he can't prove the tenants took it but it was gone on the last day of their tenancy.

\$50: for picking up and dumping garbage from the garage

\$30 for keys not returned. The tenants say the keys were left in the downstairs closet but the landlord said they are not there.

The landlord speculated that some of the above items may have been 8 years old but he did not know.

The tenants claim as follows:

\$3450 for a rent rebate of all the rent they paid from April to June 2013 (3x\$1150).

They say they would have been healthy if living elsewhere and they worked so hard on

the home to get it in shape. Due to health concerns, the female tenant had to stay with a son, a daughter in law and in a hotel for about 3 nights. The male tenant travelled for work much of the time but felt ill when back in town in the home.

\$625 as refund of their deposits

\$500 for moving expenses which they had to incur again within a 3 month period because of the unhealthy condition of the home.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

#### **Monetary Order:**

The onus is on each applicant to prove on a balance of probabilities their claim. I find it undisputed that the landlord had a fixed term lease with the tenants expiring in September 30, 2013 but as he stated in the hearing, he gave the tenants permission to break the lease and move out if they gave a proper one month's notice to end their tenancy. I find the letter written by the tenants and dated on May 27, 2013 is not a proper notice to end their tenancy as they only stated they were "breaking the lease" and did not provide a move-out date. According to section 45 of the Act, a tenant may end a tenancy on one month's notice or if a fixed term, by giving a date that is the end of the fixed term. I find the tenant did not provide proper notice to end the tenancy and the landlord is entitled to recover \$1150 for rental loss for July 2013. I find he has still not been able to re-rent the home although both parties noted he is advertising on the internet. However, I find he limited his claim to one month's rent due to his verbal offer to the tenants.

In respect to his claims for damaged baseboards, missing ceiling fan blades, a missing deck rail and vents, I find the *Residential Policy Guidelines* provide an estimated useful life for items to account for reasonable wear and tear in rented premises. I find that all of the items claimed have a useful life of 15 to 25 years, this home was about 30 years old and the landlord was unable to provide sufficient evidence that any of the items had been replaced within their estimated useful life. Therefore, I find the landlord not entitled to recover costs of any of these items as the weight of the evidence is that they were beyond the end of their useful lives.

The tenants said they had bought paint but had been unable to finish the painting. The landlord claimed \$300 to re-paint walls. He provided photographic evidence of over sprayed paint from the ceilings which necessitated this. I find his evidence credible that the paint was two years old as it is supported by the photographic evidence where the wall paint appears to be in reasonable condition before the spraying. Paint has a useful

life of 4 years in the Guidelines so I find him entitled to recover \$150 towards his painting costs. Although he provided no invoices, I find it reasonable that labour to re-paint the over sprayed walls would cost \$300. While the tenants said they had left paint and provided invoices for its cost, I note that paint colour is an individual choice and it may not be the choice of the landlord.

In respect to the claim of \$1200 for the garage door and the \$50 dumping fees, I find the weight of the evidence is that these claims relate to the downstairs tenant who rented the garage as part of his lease and it appears left lots of items in and around it. I found the tenants' evidence credible that the son who lived downstairs did some hoarding and fabricating of metal and they had nothing to do with the garage. I find the landlord not entitled to recover compensation for these items from these tenants. I also find that the landlord has no proof that these tenants stole a box of laminate and they deny doing so; as he has not satisfied the onus of proof, I find him not entitled to compensation for the laminate. Likewise, I find he has not satisfied the onus of proof in respect to the keys. I found the tenants' evidence credible that they had left the keys in the downstairs cupboard. I found them to be forthright and able to describe in detail where the keys were left so I find the landlord not entitled to reimbursement for new keys which he may have determined were necessary, given the problems with both tenants.

On the tenant's application, the onus is on them to prove on the balance of probabilities their claim. I find insufficient evidence that there was cause to break their lease because of any act or neglect of the landlord. They were unable to support their claim of the house having mould issues with any objective evidence such as a professional inspection. I find their photographic evidence indeterminate as evidence of black below windows or in the bathrooms is not necessarily evidence of mould or of black harmful mould. No medical evidence was provided to support their claims. Even if they encountered health problems as described, I find it equally probable that such health issues could be caused by smoking or by the activities being done by the son in the basement and garage. Whether or not he was fabricating and welding below the living room or in the garage (which is attached to the home), I find that fumes are normally not confined to one area but tend to filter throughout a living space. Therefore, I find they are not entitled on a balance of probabilities to a refund of all their rent as I find insufficient evidence that the home was not maintained by the landlord in accordance with section 32 of the Act. As support for the landlord's maintenance position, I find the landlord replaced a refrigerator and had commenced work on the back deck to maintain the home, although the tenants were only there for 3 months. For the same reason, I find they are not entitled to their moving costs as I find they were not compelled to move because of any act or neglect of the landlord or because the home did not meet housing standards. It was their free choice to move and the cost must be borne by them.

Their deposits will not be refunded but will be used to offset any monetary order to the landlord.

**Conclusion:**

I find the landlord entitled to a monetary order as calculated below. I find the landlord entitled to retain the security and pet damage deposits to offset the amount owing and to recover filing fees for this application.

I dismiss the application of the tenants in its entirety without leave to reapply and I find they are not entitled to recover filing fees for their application.

Calculation of Monetary Award:

Rent for July due to insufficient notice	1150.00
Cost allowance to repaint some walls	150.00
Filing fee	50.00
Less security and pet damage deposits (no interest 2013)	-675
Total Monetary Order to landlord	675.00

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

---

Residential Tenancy Branch