



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Executive Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MND, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's 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 tenant's security deposit; and to recover the filing fee from the tenants for the cost of this application.

One of the tenants, the landlord and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep the security deposit?

### Background and Evidence

The parties agree that this tenancy started on February 14, 2012 for a fixed term which ended on February 28, 2013. The tenancy continued on a month to month basis and ended on May 31, 2013. Rent for this unit was \$1,500.00 per month and was due on the 1<sup>st</sup> day of each month. The tenants paid a security deposit of \$750.00 on March 01, 2012.

The landlord's agent testifies that the tenants gave written notice to end the tenancy to the landlord on May 01, 2013. The landlord's agent testifies that they started to advertise the unit the first week in May to attempt to re-rent the unit for June 01, 2013. The unit was advertised on different websites and five or six viewings of the property took place. However, as these prospective tenants also had to give one months notice they could not rent the unit until July 01, 2013. The landlord's agent testifies that the unit was re-rented on July 01, 2013 and therefore the landlord seeks to recover a loss of rent for June of \$1,500.00.

The landlord's agent testifies that an inspection was done before the tenants moved into the unit, in the tenants' absence, and an inspection report was left at the unit for the tenants to sign and to note any deficiencies. At the end of the tenancy an inspection was done two weeks after the tenancy ended with an agent of the tenants.

The landlord's agent testifies that at the move out inspection it was noted that the carpets were left stained. The tenants had cleaned the carpets and provided the receipt for this to the landlord; however, the stains did not come out and the landlord had the carpets cleaned again. The receipt for this has been provided in evidence. The landlord's agent testifies that the carpet cleaner commented that the stains were likely to be pet stains and the stains could not be removed. The landlord seeks to recover the cost for carpet cleaning \$522.90.

The landlord's agent testifies that the tenants got a puppy without permission and only sought permission from the landlord after the puppy was living in the home. The landlord then gave the tenants permission because the dog was already living there.

The landlord's agent testifies that the tenants painted a bedroom pink. This room was not restored to its original colour at the end of the tenancy. The landlord obtained a quote to re-paint this room of \$450.00. The landlord's agent testifies that the tenants did not have permission to paint the room. The landlord's agent agrees that they have not provided an estimate or quote in documentary evidence.

The landlord testifies that she had a professional painter look at the room and this painter told the landlord that it would require taping, a basecoat would need to be applied and all walls repainting to match.

The landlord seeks an Order to keep the security deposit to offset against the loss of rent and damages. The landlord also seeks to recover the \$50.00 filing fee.

The tenant testifies that it was their understanding that they had to give the landlord 30 days notice to end the tenancy. The tenant testifies that the notice was given on May 01, 2013 and they did not move out until the end of May which would have been 31 days notice. The tenant testifies that the landlords office is often hard to get to as they are only open a few hours each day at times when the tenant is working. The tenant agrees that the landlord did show the unit five or six times to try to re-rent the unit.

The tenant disputes the landlord's claim for carpet cleaning. The tenant testifies that during the tenancy the tenant had worked at a restoration company and was able to use their equipment to clean the carpets. The tenant testifies that at the start of the tenancy the landlord did not do a move in inspection of the unit with the tenants. The tenant agrees that there was an inspection form left in the unit but the landlord's agent had not informed the tenants that they should note any deficiencies. The tenant testifies that they were waiting for the landlord's agent to come and do the inspection as the carpets

were stained at the start of the tenancy. The tenant testifies that they cleaned the carpets at that time. The tenant testifies that the staining did not come out of the carpets. The tenant testifies that they had the carpets professional cleaned at the end of the tenancy and provided a receipt to the landlord.

The tenant testifies that they did get a puppy but this was an outdoor dog and the tenants paid to have an electronic fence put in so the puppy could stay outside. The tenant testifies that the previous tenant had dogs.

The tenant agrees that they did paint one and half walls in the small bedroom pink. The tenant testifies that they bought paint to restore this room to its original colour but did not have time to do so. The tenant testifies that the paint was left for the landlord and the tenants did offer the landlord \$100.00 to paint the walls.

The tenant testifies that at the end of the tenancy they kept trying to schedule an appointment with the landlord's agent to do the move out inspection but the landlord did not set a time and date for this to take place until two weeks after the end of the tenancy. The tenant testifies that as the tenants had since moved out of the area the tenant had to appoint an agent to attend the move out inspection on their behalf.

The landlord testifies that the previous tenants did not have dogs. The previous owner had dogs but the carpets were professional cleaned when this landlord purchased the property.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for a loss of rent for June, 2013; I refer the parties to the *Residential Tenancy Act (Act)* s. 45 which states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenants agree that they did not give written notice to the landlord until May 01, 2013. This notice was effective on May 31, 2013. Therefore, in accordance with s. 45 of the *Act* this is considered to be late notice. I find the landlord took steps to re-rent the unit as quickly as possible to mitigate any loss of rent. The unit was shown to prospective tenants however was not re-rented until July 01, 2013. If the landlord suffers a loss of rent due to the tenants' non compliance with section 45 of the *Act*, then the landlord is entitled to recover that loss of rent from the tenants. Consequently, I find in favour of the landlord's claim for a loss of rent for June, 2013 of **\$1,500.00**.

With regard to the landlord's claim for carpet cleaning; the landlord is required to do a move in inspection with the tenants at the start of the tenancy pursuant to s. 23 of the *Act*. The purpose of doing an inspection as defined under s. 23 is to give opportunity for the parties to see the condition of the unit together at the start of the tenancy and make a report which is then signed by both parties to agree or disagree to the condition of the unit. As the landlord failed to do this inspection with the tenants at the start of the tenancy, but rather did the inspection report in January, 2012, I find I can place very little weight on the report especially as the tenants have contradicted the landlord's evidence. Consequently, the burden of proof falls to the landlord to provide sufficient corroborating evidence to meet the burden of proof that the carpets were in good condition at the start of the tenancy and not stained as testified by the tenant.

The parties agree that the tenants did have the carpets cleaned at the end of the tenancy. Therefore without further corroborating evidence to support the landlords claim, I find the landlord has not met the burden of proof that the staining to the carpets was caused during the tenancy. The landlords claim for carpet cleaning is therefore dismissed.

With regard to the landlord's claim for painting; the landlord is required to meet a test for damage or loss claims and has the burden of proof 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.

The tenant agrees that they did paint some walls in the small bedroom. The parties agree that the tenant left some paint for the landlord to remedy these pink walls. However, the landlord has testified that they obtained a quote from a professional painter of \$450.00. The landlord has failed to provide a copy of the quote or any other evidence to show the actual cost the landlord will incur to repaint these walls. The tenant has testified that they agreed to pay the landlord \$100.00 to repaint the walls. Consequently, without further proof from the landlord as to the actual cost I must limit the landlords claim to **\$100.00**.

I Order the landlord to keep the security deposit of **\$750.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the landlord's monetary award. I further find the landlord is entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Loss of rent for June	\$1,500.00
Painting	\$100.00

Filing fee	\$50.00
Less security deposit	(-\$750.00)
Total amount due to the landlord	\$900.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$900.00**. The order must be served on the respondents and is enforceable through the Provincial Court 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: October 15, 2013

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Residential Tenancy Branch

