



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MND, MNSD, FF, O

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution made by the landlord for a Monetary Order for unpaid rent or utilities and for damage to the unit, site or property. The landlord also applied to recover the filing fee from the tenant for the cost of the application, to keep all or part of the security or pet damage deposit and for 'other' issues.

Two agents for the landlord and the tenant appeared for the hearing and provided affirmed testimony. Both parties also provided documentary evidence in advance of the hearing. No issues in relation to the service of documents and evidence under the Act were raised by any of the parties.

At the start of the hearing the landlord withdrew his portion of the application for other issues as none were identified, and withdrew his monetary claim for utility and advertising costs as these were still not determined at the time of this hearing. The landlord was also able to re-rent the suite and as a result adjusted his monetary claim as detailed below.

### Issue(s) to be Decided

- Was the tenant justified in breaking a fixed term tenancy?
- Is the landlord entitled to a Monetary Order for cleaning costs of the rental suite and monetary losses incurred because the tenant broke a fixed term tenancy?
- Is the landlord entitled to keep the security deposit in partial satisfaction of the landlord's claim?

### Background and Evidence

Both parties agreed that the tenancy started on February 1, 2013 for a fixed term of one year which was to end on January 31, 2014. A written tenancy agreement, provided as

evidence, was completed and the tenant paid \$797.50 as a security deposit on February 1, 2013 which the landlord still retains. Rent was payable by the tenant in the amount of \$1,595.00 on the first day of each month. The landlord completed a move-in condition inspection on February 1, 2013 and a move-out condition inspection on August 31, 2013; both reports were provided as evidence for the hearing.

The landlord's agent testified that he received a written notice on August 10, 2013 which was dated August 1, 2013, on the 'Tenant's Notice to Vacant' (a form provided by the landlord), stating that the tenant would be leaving the tenancy on August 31, 2013. The notice provided no reason for ending the tenancy but detailed a forwarding address.

The landlord's agent testified that the tenant moved out of the rental suite on August 31, 2013 during which a move-out inspection report was completed showing that the rental suite was left dirty and unclean. The move-out condition inspection report shows that every room was dirty and not cleaned but shows that the same rooms were clean at the start of the tenancy on the move-in report.

The landlord's agent testified that the baseboards had to be cleaned, the walls had to be washed, trash had to be removed, the kitchen cupboards and appliances had to be cleaned, the floors had to be mopped, the light fixtures had to be cleaned and dusted and the carpets had to be cleaned. As a result, the landlord employed professional companies to complete the cleaning of the rental suite and claims the following amounts from the tenant: \$157.50 for carpet cleaning; \$393.75 for 15 hours of cleaning labour; and \$115.07 for cleaning materials which the landlord purchased; however the landlord only used half of the materials and therefore only claims half the cost of the materials in the amount of \$57.54. The landlord provided invoices supporting these costs which were completed after the tenant had vacated the rental suite. The total cost claimed by the landlord for cleaning costs is \$608.79.

The landlord's agent testified that after the rental suite had been cleaned the rental unit was put back onto the rental market for re-rent in an effort to mitigate the losses of the fixed term tenancy. The landlord's agent testified that the rental market was saturated and found it difficult to re-rent; several advertisements were placed on multiple major websites including their own company website and after being unsuccessful in renting it out, they had to offer two weeks free rent as an incentive and inducement for new renters. As a result, the landlord's agent was able to re-rent out the suite on November 23, 2013. The landlord provided a copy of the new renter's tenancy agreement to support his testimony.

As a result, the landlord claims the following in lost rent because the tenant ended the fixed term tenancy: \$1,595.00 each for the months of September and October, 2013 and only two weeks for November, 2013 in the amount of \$797.50. The total amount of the landlord's claim for lost rent therefore is \$3,987.50.

The tenant testified that the reason why he broke the fixed term tenancy is because the landlord failed to fix the front door of the rental suite which was broken despite requesting this to be fixed in writing. The tenant testified that the door was broken to the extent that a folded piece of paper could be placed through it and that it was difficult to get in and out of the rental suite thus creating a fire hazard. In his written submissions, the tenant had indicated that he left the tenancy because the tenancy had changed hands without his consent in July, 2013 when the new property management company took over and that this was illegal. However, the tenant testified that this was not the reason for ending the tenancy. The tenant testified that he had a good working relationship with the previous management company as they would complete repairs and maintenance diligently and to a satisfactory standard, but the new company failed to complete repairs when asked to do so.

In relation to the cleaning, the tenant admitted that he did not clean the unit but he did not leave out trash and the condition of the unit testified to by the landlord's agent was being exaggerated. The tenant testified that when he moved into the rental suite, it was not cleaned and the tenant had to vacuum the carpets for 8 hours, remove sawdust throughout the rental unit and had to wash the blinds and windows. When questioned why the tenant had signed the move-in condition inspection report without making reference to any of the issues testified to, the tenant stated that when he signed the condition inspection report the rental suite was dirty but he was told that it would be cleaned in 3 days time.

The landlord's agent testified that when the move-in condition inspection report was completed, it went to the extent to detail issues such as scuff marks, a missing light bulb and paint chips. Therefore, if these had been noted then surely the landlord and tenant would have noted that the condition of the rental unit was dirty to support the tenant's version that he had left the rental suite in the same condition he had received it in.

The landlord's agent testified that when his company took over the management of the rental suite in July, 2013, he conducted a routine inspection of the rental suite. The landlord's agent testified that he entered through the front door without any problems and it was during half way through the inspection that the tenant pointed out that there was a minor issue with the door which squeaked and was sticky; no mention was made by the tenant about the safety risk this was causing him. However, the door still

functioned adequately. The landlord's agent testified that there was no urgency with regards to completing this minor repair and before they could arrange to have a potential new door ordered and replaced, the tenant vacated the rental suite. The tenant testified that in the event of a fire, the door would prevent him and his family from escaping from the rental unit. The landlord's agent rebutted the tenant's testimony regarding the door being a fire risk by provided a photograph of the back of the rental unit which shows another means of exit out of the rental suite.

The tenant was questioned about how the damage came about and the tenant submitted that it was present at the start of the tenancy. The landlord's agent testified that he was informed by the owner of the property that it was caused by the tenant's friend. The tenant was questioned why this was not addressed at the start of the tenancy and the tenant replied stating that the problem was not so bad at the start of the tenancy but had continued to get worse as the tenancy continued.

The tenant provided three advertisements which the tenant claims show that the property was rented shortly after he left the rental suite. The first advert simply shows the suite for rent on September 7, 2013; the second advert is an e-mail titled "Property is rented. Photo taken Sept 19, 2013," but there is no photograph or indication that this refers to the rental suite for this hearing. The final advert shows the property is rented but again, no date of the advert has been provided. The landlord's agent states that the final advert is a cut and paste from his website taken during the time the rental suite was indeed rented and does not refer to any period which shows that it was rented after the tenant had vacated the suite.

### Analysis

The tenant provided the landlord with a forwarding address in accordance with the requirements of the Act before the tenancy ended. The tenancy was ended by the tenant on August 31, 2013 and therefore the landlord had until September 15, 2013 to make an application to keep the tenant's security deposit. As a result, I find that the landlord made the application within the allowable time limits provided by the Act.

Section 45(2) and Policy Guideline 30 to the Act explains that neither a landlord nor a tenant may end a fixed term tenancy except for cause or breach of a material term; a material term being something so serious that it goes to the heart of the tenancy agreement.

Therefore, the issue to be determined is whether there was breach of a material term of the tenancy agreement. The tenant claims that the landlord failed to complete the repair

of the door which created a fire risk for the tenant. The landlord submits that the issue of the repair to the fire door was a minor issue and one which the tenant failed to address at the start of the tenancy and instead of giving some time to the landlord to make the repair, ended the tenancy for ulterior reasons using this as an excuse to get out of his responsibility for the fixed term tenancy.

Based on the balance of probabilities, I accept the evidence of the landlord over the evidence presented by the tenant which is not plausible when considering all of the circumstances. The tenant testified that he had a good working relationship with the previous management company who completed repairs in a timely manner. Therefore, if the tenant stated that the repair to the front door was a safety risk to him and his children, it would have been expected that the tenant would have got this dealt with straight away instead of electing to try and deal with this issue towards the end of the tenancy. The tenant also had other means of escaping the rental suite in the event of the fire as evidenced by the landlord's photographs of the rental suite's back exit. The tenant also had other remedies under the Act via dispute resolution for dealing with repairs claimed by the tenant that were a risk to his safety, which the tenant failed to exercise, choosing instead to end the fixed term tenancy. The tenant also provided insufficient evidence to show that the damage to the door created a fire risk. As a result, I find that the tenant ended the fixed term tenancy without cause and the landlord did not breach a material term of the tenancy. Therefore, I find that the tenant is responsible for the remainder of the tenancy.

Section 7(2) of the Act states that a party claiming compensation for non compliance with the Act must do what is reasonable to minimize the loss. The landlord testified that the rental suite was re-rented on November 23, 2013 and provided a tenancy agreement for the new renter to support this claim. The landlord also testified that the rental suite was advertised heavily on-line to get maximum exposure in a difficult market. The tenant presented three adverts which fail to show that the rental unit had been rented earlier to what the landlord had testified to. I accept the evidence of the landlord on the balance of the probabilities and I find that the tenant is responsible for the rental losses of the landlord in the amount of \$3,987.50 claimed.

Section 37 (2) (a) of the Act states that when a tenant vacates a rental unit, the tenant must leave it reasonably clean and undamaged except for reasonable wear and tear. Section 21 of the Residential Tenancy Regulation allows a condition inspection report to be used as evidence of the state of repair and condition of the rental suite.

The tenant testified that the rental suite was dirty at the start of the tenancy. However I find that the move-in condition inspection report does not support his testimony and I

don't accept his testimony that he signed it on the promise that it would be cleaned by the landlord in three days time which is disputed by the landlord. I accept the evidence of the landlord that if the rental suite was dirty at the start of the tenancy then this would have likely been recorded in the move-in inspection report because other items such as scuff marks and missing lights bulbs had been recorded. The tenant testified that he had not left the rental suite clean. Based on the condition inspection reports, I find that the tenant is responsible for the landlord's cleaning costs in the amount of \$608.79 as evidenced by the invoices provided by the landlord.

As the landlord has been successful in this claim, I also award the landlord the \$100.00 filing fee for the cost of this application pursuant to Section 72 of the Act. Therefore, the total amount payable by the tenant to the landlord is \$4,696.29. As the landlord already holds a \$797.50 security deposit, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the landlord is awarded \$3,898.79.

### Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$3,898.79**. This order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) 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 Act.

Dated: December 17, 2013

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Residential Tenancy Branch

