



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNR OPR MNSD FF

### **Introduction:**

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

- a) A monetary order pursuant to Sections 46 and 67;
- 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.

### **SERVICE:**

Both parties attended and the tenant agreed she received the Notice to end Tenancy dated August 3, 2013 (although this is no longer in dispute) and the Application for Dispute Resolution by registered mail. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act.

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

Has the landlord proved on the balance of probabilities that the tenant owes rent, and that she did damage to the property beyond reasonable wear and tear and the amounts owed? Is the landlord entitled to recover the filing fee?

### **Background and Evidence:**

Both parties attended and several witnesses and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenant commenced living in the premises in August 2011, a security deposit of \$320 was paid and rent is \$640 a month. The landlord claims the tenant owes rental arrears of \$410 for June, 2013 and \$640 for each of July, August and September 2013. He served a Notice to End Tenancy on August 3, 2013 claiming rent owing of \$1790; the tenant filed an Application to dispute the Notice under file #L1 but at the hearing on September 16, 2013, the tenant withdrew her Application as she stated she had vacated the premises. There was no indication in the Decision that the tenant had raised the question of the arrears that were the cause of the Notice. In the hearing today, the tenant stated she had paid all her rent to the end of August 2013 and vacated September 5; she did not

pay rent in September because she claims she had received a Notice to End her tenancy and she obeyed the Notice and vacated. She said she told the landlord on August 31, 2013 that she was vacating and was told by the caretaker to return keys to another tenant on the first floor and she did this.

In respect to back rent, she wrote that she had a home invasion in April 2013 and the landlord told her to forget about it which, to her, meant that she did not have to pay rent because the building was not secure. In the home invasion, she states her daughter and son were robbed and beaten until rent was handed over to some people from another apartment. She states she has never received a rent receipt; she paid 6 months in advance in April 2012 and was promised one month free rent in September. The landlord said that when the tenant reported a home invasion, she asked her if it had been reported to the Police and it had not. She never excused the rent and if the tenant had lost her wallet, she could have called to get the bank transfer number again.

The landlord provided copies of his bank statements and transit # for the direct deposits of the rent cheques by this tenant. The banking records show \$825 was paid in April 17 for back arrears but she still owed \$340, then \$580 was paid April 29, leaving her with only \$400 owed for May rent, \$630 was paid on June 10, leaving a balance of \$410 owed for June rent and no payments were made to the landlord's account by the tenant in July, August and September 2013. The tenant said that she had problems doing a bank deposit after her purse was stolen. She states she did a direct deposit in June but then she was travelling but states she sent the money to her son and daughter and they paid the rent in cash in July and August but no rent was paid in September 2013. Her daughter said her mother would e-transfer the money to them and they took it out and paid; she gave the money at the door to the landlord on July 5, 2013 and her brother in August 2013; her brother did not attend to give evidence. In the written statement, the tenant says that words were passed between her son and the landlord when the landlord came to collect rent in August and the son told him that the building could be condemned for mould; she said they got the Notice to End their tenancy a few days later. The landlord denies getting any cash at the door from the daughter or son and said he had never spoken to the son and did not know him. He said if he had received the rent, he would not have served the Notice to End Tenancy on August 3, 2013. He says he was in another city on July 5<sup>th</sup> and his practice is to collect any rent not directly deposited on the first Saturday of each month. The landlord claims \$2,330.00 in rent arrears from June to September 30, 2013.

The landlord also claims \$1502.11 in damages. Repairs were needed to some items, flooring and curtains had to be replaced and cleaning had to be done. He provided receipts from the hardware store for many items and an estimated labour cost of

\$734.00. He said he and his wife did the work themselves and it took about 32 hours, with the cleaning taking 12 hours (2 persons at 6 hours each). He supplied photographs as evidence showing walls that needed painting, soiled carpets and some broken door jambs and a screen. No condition inspection was done at move-in or move-out and the tenant maintains that she and a daughter cleaned before they left. She states the unit was in the same condition as when she moved in and the landlord was just upgrading the kitchen floor. She agrees that steam cleaning the carpets was necessary as she had dogs. She pointed out photographs claiming they showed that some damage was pre-existing.

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 the landlord to prove on a balance of probabilities that rent was owed, the damages were beyond reasonable wear and tear, were caused by the tenant and the amounts owed in compensation.

I find the landlord's evidence credible and I prefer it to the evidence of the tenant that rental arrears of \$2330.00 are owed. I find his evidence is well supported by the bank statements showing the tenant's direct deposits and notations how they were applied. I found the landlord gave evidence in a straightforward and honest manner and accounted for the 2012 advance payment that was made. A friend of the tenant gave evidence to this lump sum payment but it happened in 2012 and none of it applied to the present claim for arrears. I find it improbable that the cash payments were made in July and August, 2013 as stated. A Notice to End Tenancy for unpaid rent was served on August 3, 2013 and I find it improbable that the son, if he made a payment, would have handed over cash without getting a receipt to prove he paid the rent and thus cancelled the Notice. Furthermore, in the hearing in September, the tenant withdrew her Application to dispute the notice and there is no notation in the Decision that she stated that the rent had been paid. Therefore, I find the landlord entitled to a monetary order for \$2330 for rental arrears representing \$410 for June and \$640 for each of July, August and September. While the tenant contended she should not have to pay rent for September, I find she was still occupying the premises on September 1, 2013 when rent for the month is due.

In respect to compensation for damages claimed by the landlord, I find the evidence is that the home was built in the 1970s or 1980s and the landlord bought it about 6 years ago. He does not know the age of the various doors or screens but thinks the suite in

question was built sometime after the home was built. He said the floor in the living room was newer and painting was done at move-in in August 2011 which would make the paint two years old at move-out. The *Residential Policy Guidelines* provide a guide for the useful life of items in rented premises which is designed to allow for reasonable wear and tear. Wooden items, screens and floors are assigned a useful life of 10 to 15 years. I find the weight of the evidence is that since the doors, jambs, screens and floors in this home are more than 10 years old in this 25+ year old home, they are beyond their useful life even if the suite was installed later and some years before the landlord bought the home six years ago. Furthermore, the tenant maintains they did not damage these items but left them in the same condition as when they moved in. The onus is on the landlord to prove his claim and I find he has not satisfied the onus in respect to the repairs needed to various items in the home such as doors, screen, flooring and tub as these problems may have pre-existed the tenancy.

I find that some painting was required; the paint was two years old and the Guidelines provide for a useful life for paint of 4 years. I find the photos illustrate the need to repaint due to the number of holes to be filled. Therefore I find the landlord entitled to recover 50% of the cost of painting and supplies. The invoices show \$132.51 +15.23+32.37 for paint supplies for a total of \$180.11 (50% is \$90.06). The tenant agreed that the carpet needed cleaning. Carpet cleaning supplies total \$54.14 and I find the landlord entitled to recover this cost. The landlord did most of the work himself but the enclosed company quote estimates 1.5 hours for painting and patching and \$234 for general cleaning with the carpet cleaning extra. This is allowing about 8 hours at \$28 hour for two people. The quote notes the carpet is badly stained and smelly. The landlord notes it took 6 hours each for him and his wife to clean. Based on this evidence and the professional quote of 1.5 hours for painting (not including the cleaning and carpet), I allow the landlord and his wife \$30 hour (\$15 each for 8 hours each) or \$240 for any painting and cleaning the 700 sq. ft. suite and the carpet. Labour costs for repair are not awarded as there is insufficient evidence that the tenants caused the damages needing repair. Furthermore, the daughter said she helped her mother clean, the photos do not show a very dirty suite, except for the carpet and there is insufficient evidence to show the state of cleanliness at move-in. I dismiss the claims of the landlord for damages other than painting and cleaning costs allowed for the above reasons. I find the landlord entitled to compensation for damages as noted above.

I find the landlord not entitled to recover his meal costs while doing repairs as he would have to eat whether in or out of town. I also find him not entitled to recover other costs for the dispute resolution process such as registered mail as section 72 of the Act limits recovery of the costs of the process to \$50 for the filing fee. I find the landlord entitled to recover \$50 filing fee.

**Conclusion:**

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application.

## Calculation of Monetary Award:

Rental arrears	2330.00
Painting supplies (50%)	90.06
Carpet cleaning supplies	54.14
Labour to clean and paint	240.00
Filing fee	50.00
Less security deposit (no interest 2011-13)	-320.00
Total Monetary Order to Landlord	2444.20

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: December 19, 2013

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Residential Tenancy Branch