



# Dispute Resolution Services

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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 for rental loss or unpaid rent pursuant to Sections 44, 45 and 67 for breach of a fixed term lease and insufficient notice; and
- b) 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:

- c) A monetary order or rent rebate as compensation for failure of the landlord to maintain the property contrary to section 32, also for the storage fee of furniture and for an NSF fee for a cheque cashed for rent for September 2013; and
- d) To recover the filing fee for this application.

### **SERVICE**

Both parties attended the hearing. The landlord confirmed receipt of the Notice to End Tenancy dated August 29, 2013 and of each other's Application for Dispute Resolution. 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 the lease was breached and he is entitled to a monetary order for rental arrears or loss and to recover the filing fee for this application?

Or has the tenant proved on a balance of probabilities that the landlord through act or neglect caused the premises to be unlivable and breached their privacy and peaceful enjoyment contrary to section 28 of the Act? If so, what is the amount of compensation

to which they are entitled and are they entitled to recover the filing fee for this application?

**Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The parties were polite to each other and agreed largely on the facts. It is undisputed that the tenancy commenced in July 2013, that a fixed term lease for one year was signed, that rent was \$850 a month plus \$75 for utilities and a security deposit was paid but was refunded to the tenant in September 2013. It is undisputed that the tenant did not pay rent for September and served a Notice to End their tenancy on August 29, 2013; they vacated the premises on September 1, 2013. The landlord said he was able to re-rent the unit for October 1, 2013. He claims the unpaid rent of \$850 for September and excludes the utilities as they vacated on September 1, 2013.

The tenants said that they were shown the suite by the previous tenant who had advertised on the internet although she was a month to month tenant and had no obligation to re-rent the unit. She gave these tenants the landlord's telephone number and they called him and signed a lease with him. They said that there was no condition inspection report; the landlord only gave them some blank forms which they did not complete. They were told by the previous tenant that another tenant's behaviour had caused problems and he was on his last warning and she also told them that in her four years of tenancy, she had seen one mouse the previous month. They said they brought the problems with the unit to the landlord's attention verbally in July and August but did not give him written notice of the problems until August 29, 2013.

The landlord gave a Notice on August 23, 2013 for pest control to enter on August 29, 2013 as he said he did this regularly. Pest Control arrived and could not push open the door so left. The landlord said it appeared the door was on a chain but after phoning the tenant, he realized it was just stuck and forced it open. He was unable to get pest control to return until September 10, 2013 which the tenants say was unacceptable, given the severity of the problem which was causing them to stay with friends. They said they also had to call Police on the other tenants because of noise and fighting. The landlord wanted them to meet with him and the problem tenants to discuss the issues before issuing a Notice to End Tenancy to the problem tenants. They said they were fearful of their safety. They claim the following:

\$45: NSF charges by the bank as the landlord tried to cash their September rent cheque after saying he was going to return it.

\$183.75: One month storage charges for their furniture necessitated by the rodent problem.

\$600: Rent Rebate of \$300 for each of July and August due to unlivable conditions of the unit.

In evidence are photographs of the unit, records of conversations, Notice of Entry for pest control, demand letter for repairs dated August 30, 2013 and statements of the parties. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

For each claim, the onus is on the applicant to prove on a balance of probabilities their claim. I find there was a fixed term lease from July 1, 2013 to expire on June 30, 2014 signed by the parties. I find the tenants breached this lease by vacating on September 1, 2013 after providing notice to end their tenancy on August 30, 2013. According to section 45 of the Act, a tenant may end a fixed term tenancy not earlier than the end of the fixed term and the tenant is responsible for rent during the term. However, the landlord has the obligation to mitigate his damages and he did so by re-renting for October 1, 2013. I find he has satisfied the onus of proving that he is entitled to rental loss for September 2013 in the amount of \$850 as claimed. Although the tenants claim that they had to breach the lease due to unlivable conditions and should not owe rent, I find that section 26 of the Act provides that tenants must pay rent when due whether or not the landlord complies with his obligations under the Act (contrary to what the tenants say in their written submission).

In respect to the tenants' claims, the onus is on them to prove on the balance of probabilities that the landlord, through act or neglect, caused the losses claimed. I find they incurred a \$45 NSF fee when the landlord attempted to cash their rent for September; they were still occupying the premises on September 1, 2013 and rent was owed on the 1<sup>st</sup> of the month. Although the tenants claim the landlord said he would return 10 cheques, I find if he said this, it was based on them vacating at the end of August and they did not. I find their loss was the result of their own actions in not vacating before September 1<sup>st</sup> and having insufficient funds in their account and not through act or neglect of the landlord. I dismiss this portion of their claim.

Regarding their claims for storage locker fees and a rent rebate based on the rodent problem and the failure of the landlord to provide them peaceful enjoyment contrary to section 28 of the Act, I find before moving in July 2013, they inspected the unit and questioned the other tenant who stated there was no rodent problem as she had only one mouse in 4 years. Although they said that they told the landlord verbally of problems, I prefer the landlord's evidence that the first verbal information on mice was on August 20, 2013 as it is supported by the fact that the landlord provided written

notice on August 23 to a number of tenants of the entry of a pest control company on August 29, 2013 to deal with the mouse problem. Also, there was no written notification of problems by the tenants until August 30, 2013. The landlord's diligence is illustrated by him telling the tenants that the pest control company would come every two weeks and make their unit a priority after their complaint on August 30, 2013; when they were unable to enter due to a sticking door, the landlord also rescheduled to the first available date of September 10, 2013. I find the tenants had not notified the landlord of the door problem so it was due to their neglect in not doing this that the pest control company was unable to enter. I find the preponderance of the evidence is that the landlord was acting diligently to control any rodent problems. I dismiss this portion of the tenants' claim as they have provided insufficient evidence that the landlord through act or neglect caused them to suffer with a rodent problem and did not do necessary repairs when notified.

With respect to the ongoing problems with another tenancy, I find the landlord acted diligently to address the problem. He tried to set up a meeting with all the tenants concerned to discuss the issues and promised eviction afterwards if the complaints were shown to be valid. Although the tenants said that their evidence should not be necessary and they were fearful for their safety, I find the Act provides in section 47 that a landlord has to show good cause to evict a tenant and this usually entails some valid evidence from other tenants; furthermore, the landlord would be present at the meeting to ensure their safety. The tenants also had the option of calling the Police if the other tenant subsequently threatened them. Therefore, I dismiss this portion of the tenants' claim as they have provided insufficient evidence that the landlord through act or neglect failed to ensure their peaceful enjoyment.

**Conclusion:**

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


I find the landlord entitled to recover rental loss for September in the amount of \$850 plus his filing fee for this application for a total of \$900.

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: January 07, 2014

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Residential Tenancy Branch

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M. Bruce, Arbitrator  
Residential Tenancy Branch

