



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing was convened by way of a conference call in response to an application made by the landlord for a Monetary Order relating to: unpaid rent or utilities; for damage to the unit, site or property; to keep all or part of the pet damage or security deposit; and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord and one of the tenants (SC) appeared for the hearing. The landlord managed to locate the tenants' address and served a copy of the application and Notice of Hearing documents to one tenant by registered mail and served the other tenant in person. The tenant confirmed receipt of the hearing documents and the landlord's evidence via both of these methods of service. As a result, I find that the landlord served the tenants with the documents and evidence as required by the *Residential Tenancy Act* (referred to as the Act).

The landlord's agent and the tenant both provided affirmed testimony which was carefully considered in this decision along with the landlord's documentary evidence provided prior to the hearing in accordance with the Act.

### Issue(s) to be Decided

- Is the landlord entitled to unpaid rent in the amount of \$9,500.00?
- Is the landlord entitled to a Monetary Order for damages to the rental suite?
- Is the landlord entitled to keep all of the security deposit in partial satisfaction of the claim?

### Background and Evidence

Both parties agreed that the tenancy started on September 1, 2010 on a month to month basis. The landlord and tenants completed a written tenancy agreement and the

landlord collected a security deposit from the tenants in the amount of \$700.00 on August 12, 2010. Rent was payable by the tenants in the amount of \$1,400.00 on the first day of each month.

The landlord completed a walk through with the tenants but failed to complete the move in condition inspection report. The landlord did not complete the move-out condition inspection report as the tenants had abandoned the rental suite after being issued with a notice to end tenancy for unpaid rent. The tenant testified that the landlord had not completed a move in inspection report and that he had not been contacted by the landlord to arrange the move out inspection. However, the tenant testified that they had not provided the landlord with a forwarding address.

The landlord's agent testified that the tenants had failed to pay rent on January 1, 2011 and that from this point onwards the tenants pursued a course of action during which they paid the rent in: full for some months; partial payments for other months; two separate payments for two months; nonpayment for four months; and over payments for three months. The landlord provided a 'Rent Summary Sheet' document which details all of the payments made by the tenants since the tenancy started. The document shows that from February, 2013 the tenants then went on to make no payments for rent at all until the tenants left on February 10, 2013 after being served with a notice to end tenancy. The landlord's agent testified that the tenants left an outstanding balance of \$9,500.00 for unpaid rent. The landlord served the tenants with a notice to end tenancy for unpaid rent on February 11, 2013 for a total amount of \$9,500.00 that was due on February 1, 2013.

The landlord's agent testified that the landlord had given the tenants lots of chances to pay the rent as the tenants had paid some months and some months they had made partial payments. The landlord had also sympathized with the tenants as they had children and one of the tenants had lost his job. The landlord continued to give the tenants opportunity and chances to pay the rent relying on the fact that the tenants would be getting a tax rebate which could have been used to put towards the rent. The landlord even offered the tenants the opportunity to sublet part of the rental suite to pay the outstanding rent; instead the tenants rented out the basement suite and kept the income. The landlord also provided e-mail exchanges that took place with the landlord and the tenants showing repeated requests for unpaid rent throughout the tenancy.

The landlord also seeks the following amounts in relation to damage to the rental suite that was discovered by the landlord after the tenant had vacated the rental suite. The following evidence was presented by the landlord's agent:

- \$600.00 in labor and dump fees. The landlord's agent provided a number of photographs as evidence showing the garbage that had been left behind by the tenants after vacating the rental suite. This included things like televisions, used sofas, bed mattresses, tables, desks and general garbage. This had to be hauled away in three separate journeys using a large trailer.
- \$500.00 for cleaning the walls, stove, fridge and bathrooms. No photographs were provided in relation to this portion of the claim.
- \$150.00 for repairs to the rental suite walls. The landlord provided a photograph showing two holes in the walls which the landlord's agent testified were caused by the tenant who installed a child gate. The landlord's agent testified that the tenants failed to make this repair when they left the rental suite.
- \$150.00 for removal of the carpet and underlay. The landlord's agent provided one photograph showing stains in the carpet and testified that the tenants had left the carpets so filthy that the carpet and underlay had to be removed. The landlord's agent clarified that no claim was being made for the replacement of the carpet from the tenants as this was being done as part of renovations.
- \$100.00 for vehicle gas/fuel used through the cleaning and repair of the rental suite.

The landlord or landlord's agent did not provided individual receipts for the above amounts being claimed but provided one receipt for cash given to the landlord's agent to complete the repairs above.

The tenant testified that they were in rental arrears for only \$3,000.00 as they had made payments to the landlord in relation to the underpayments of rent throughout the tenancy. However, the tenant could not provide any proof of this, claiming that he went to the bank and deposited cash into the landlord's account. The tenant also stated that his wife had some documentary evidence to show the payments but these were not available for the hearing.

In relation to the damages the tenant admitted to leaving the junk left behind claimed by the landlord as the notice to end tenancy did not allow them enough time to remove these items. However, the tenant denied the landlord's remaining claim stating that the carpets were already stained and filthy at the start of the tenancy and that they had spent three hours cleaning the stove and fridge as well as the rental suite before they vacated. The tenant testified that they had spent 4 days cleaning the suite at the start of the tenancy which included professional cleaning of the carpets. The tenant admitted to installing a child gate in the rental suite but only because the holes were already there for one at the start of the tenancy.

### Analysis

In relation to the landlord's claim for unpaid rent, I find that the landlord had given the tenants ample opportunity to pay rent throughout the tenancy. I also accept the evidence of the landlord's agent that they had failed to end the tenancy earlier based on the reasoning provided regarding the tenants' partial, complete and over payments of rent during the tenancy. The tenant provided insufficient evidence to show that they did not owe the landlord \$9,500.00 in rent arrears and I am not willing to accept that the tenants did not have, or were unable to obtain, documentary evidence of a transaction from making a payment to a financial institution. Therefore, I award this amount to the landlord.

Section 23 of the Act states that at the start of the tenancy the landlord and tenant must complete a condition inspection of the rental suite. I find that the failure of the landlord to complete a move-in inspection report makes it difficult for me to assess the landlord's claim for damages to the rental suite. As a result, I make the following findings.

The tenant admitted to leaving the items behind at the end of the tenancy as claimed on the landlord's photographic evidence. On this basis, I award the landlord the \$600.00 claim for the labor and costs associated with hauling these items for disposal.

However, I find that the remainder of the landlord's claim for damages to the rental suite is undermined by the following:

- lack of a move in condition inspection report showing the condition of the rental suite at the start of the tenancy which could have disputed the tenant's testimony about cleanliness of the rental suite and holes in the walls at the start; and
- the lack of photographic evidence showing the cleanliness of the walls, stove and fridge.

Section 37(2) (a) of the Act states that the tenant must leave the rental suite reasonably clean and undamaged, except for reasonable wear and tear, at the end of the tenancy. From the photographic evidence provided by the landlord of the items left behind by the tenants, I find that on the balance of probabilities, it would have been likely that the landlord would have incurred some costs for cleaning the rental suite. Therefore, I award the landlord an appropriate amount of \$100.00 for cleaning costs and dismiss the remainder of the landlord's claim.

Therefore, it is my finding that the landlord be awarded a total amount of \$10,200.00 monetary compensation for this claim.

As the landlord has been successful in this matter, the landlord is entitled to recover from the tenants the \$100.00 filing fee for the cost of this application. Therefore, the total amount awarded to the landlord is \$10,300.00.

As the landlord already holds a \$700.00 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 \$9,600.00.

### 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 **\$9,600.00**. This order must be served on the tenants 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 *Residential Tenancy Act*.

Dated: January 06, 2014

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Residential Tenancy Branch

