



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, 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; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (referred to as the Act), regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of the application.

The landlord and one of the tenants (KB) appeared for the hearing. No issues in relation to the service of the hearing papers by the landlord were raised by any of the parties.

The tenant stated that she had provided late evidence to the Residential Tenancy Branch. However, no such evidence was before me during the time of the hearing; the tenant confirmed that she had not provided a copy of this evidence to the landlord and therefore I have not considered any documentary evidence from the tenant.

The tenant denied receiving the landlord's evidence for this hearing. However, the landlord provided the Canada Post tracking numbers for each tenant who had been served with a copy of the evidence by registered mail on December 16, 2013. The landlord confirmed that the tenants had failed to pick up the documents after being left a note by Canada Post. Section 90 of the Act states that a document served by registered mail is deemed to have been received 5 days later. Based on this I find that the landlord served the tenants with a copy of the evidence in accordance with the Act.

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

Issue(s) to be Decided

- Is the landlord entitled to unpaid rent for September, 2013?
- Is the landlord entitled to a Monetary Order for damages to the rental suite and for losses under the Act, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the security deposit in partial satisfaction of the claim?

Background and Evidence

Both parties agreed that the tenancy started on May 1, 2011 for a fixed term of one year after which it reverted onto 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 \$797.50 on May 1, 2011. Rent was payable by the tenant in the amount of \$1,500.00, on the first day of each month. The landlord did not complete a move-in condition inspection report but did complete a move-out condition inspection report with the tenant on September 2, 2013.

The landlord testified that she had received verbal notice from one of the tenants (AB) in June that both tenants would be vacating the rental suite at the end of July, 2013. In response to this, the landlord testified that she began the process of advertising the rental suite using a company. However, the tenants did not vacate until September 1, 2013. On this date the landlord completed a move-out condition inspection during which the landlord was not satisfied that the tenants had left it undamaged and reasonably clean. The landlord requested the tenants to complete repairs and clean the rental suite as they were still moving out their belongings. The landlord posted a Notice of Final Opportunity for a Condition Inspection on the same day to be completed on September 2, 2013. The landlord testified that the next day, the tenants had fully moved out but most of the items she had requested the tenants to complete and repair were not done. As a result, the landlord now seeks the following amounts based on the following documentary evidence submitted for the hearing:

- Unpaid rent in the amount of \$1,500.00 for September, 2013. The landlord testified that she had tried her best to re-rent out the suite but prospective renters were being put off by the mess that had been created by the tenants as well as the cigarette smoke odor coming from the garage. The landlord provided a number of photographs showing the mess and damage left behind by the tenants throughout the rental suite. The landlord testified that after the tenants had left,

the remaining part of the month was required to clean and repair the rental suite before it could practicably be rented out again for the month of October, 2013.

- \$154.56 in advertising costs. The landlord provided six invoices of the costs she had incurred advertising the rental suite from June to September, 2013. The landlord testified that the tenants kept moving their move-out date back and as a result she had to continue to incur these advertising costs. In addition, the landlord testified that she started to advertise the rental suite in June, 2013 in order to mitigate any loss of rent. The landlord confirmed that the tenants had provided no written notice to end the tenancy.
- \$750.00 for replacement of the master bedroom and spare bedroom carpet. The landlord testified that the tenants' dog urinated all over the carpets to the extent that it penetrated the underlay and the floor underneath. The landlord provided an invoice for this cost as well as photographs showing the damage to the carpet and floor underneath. The landlord testified that the carpet was in pristine condition and was ten years old.
- \$850.00 for labor costs of installing the carpet and laminate wood flooring. The landlord provided an e-mail quote explaining the costs for repairing and treating the wood flooring and installing the carpets as well as photographic evidence of the damage caused to the flooring. The landlord testified that the tenants' dog had also urinated on the flooring in the living room which the tenants had installed as part of the tenancy in exchange for a rent reduction. The flooring was one year old and the contractor providing the quote stated that he had never seen such areas of saturation with dog urine which smelt toxic.
- \$480.00 for cleaning costs of the rental suite and yard maintenance. The landlord claims 16 hours of cleaning for 2 people at \$15.00 per hour in relation to the labor costs. The landlord provided a number of photographs showing dirty kitchen appliances, dirty floors and windows, dirty kitchen draws, toilet stains, garbage piled up around the rental suite and an unkempt garden.
- \$154.37 for utility costs. The landlord testified that the tenant was responsible for utility costs and that it had been brought to the attention of the landlord that the tenants had not paid the water bill. The landlord facilitated an agreement with the utility company for the tenants to make the payment which they failed to do and as a result, the landlord was billed for the outstanding amount which was provided as evidence.

- \$284.73 for propane filling. The landlord testified that the tenants were provided with a full propane tank at the start of the tenancy as evidenced by an e-mail she had sent to the tenant, provided as evidence. The landlord testified that the tenant promised to fill this up at the end of the tenancy in accordance with the signed tenancy agreement. However, the tenant failed to do this and as a result the landlord was billed for this amount which was provided as evidence.
- \$240.00 for re-priming the garage floor. The landlord testified that the tenants had been smoking in the garage throughout the tenancy and this had caused the cigarette smoke and ends to penetrate the concrete flooring. During the tenancy this had been masked by the tenants using air fresheners, but later it became apparent to the landlord that this required to be rectified. The tenants made an attempt to re-prime the flooring but the landlord explained that it was not done properly and the smell was still evident and potent. A number of photographs were provided showing the garage flooring and the attempt made by the tenants to rectify the damage.

The landlord testified that the tenants had been given an opportunity to complete the repairs and clean the rental suite, but only minor things had been done. The landlord also testified that she gave the tenants an opportunity to get their own costs for the damages, cleaning, and carpet and flooring replacement in an attempt to mitigate her losses. The landlord also provided a number of photographs to support her testimony that the rental suite at the start of the tenancy was clean and undamaged.

In the tenant's testimony, she re-iterated the fact that the landlord had not done a move-in inspection report and therefore it was difficult to assess the damages to the unit at the start of the tenancy, although none were claimed by the tenant. The tenant stated that the utility and propane re-fill bills had been recently paid and proof of this was in her evidence package. However, no such evidence was before me at the time of making this decision.

In relation to the rent for September, 2013, the tenant testified that the landlord had been given notice to end the tenancy in plenty of time. However, the tenant confirmed that no written notice to end the tenancy had been provided to the landlord by either tenant.

The tenant wished to make no submissions in relation to the carpet and associated labor costs, as well as the landlord's advertising costs. However, the tenant testified that the wood flooring had been put into the rental suite at their own cost.

In relation to the landlord's claim for costs for cleaning and yard maintenance, the tenant testified that she had cleaned the unit thoroughly with the exception of the windows and was surprised to learn of the landlord's claim in relation to this. The tenant testified that the rental unit had a large garden and it was impractical to maintain such a large space. The tenant testified that she had made a number of improvements to the garden such as planting flower beds as well as a vegetable garden.

The tenant testified that they had tried to re-prime the garage flooring but the landlord contested this testimony providing photographs showing that this had not been done properly and that the smell of cigarette smoke was still present.

### Analysis

Section 45(1) of the Act talks about the tenant's obligations when ending a month-to-month tenancy. The Act states that the tenant must give the landlord a notice of at least one full rental month before ending the tenancy and this must be done in writing. The tenants failed to provide the landlord written notice to end the tenancy and fully vacated the tenancy on September 2, 2013, making it impossible for rental at the start of September, 2013. As a result, I find that the landlord is entitled to loss of rent for September, 2013 in the amount of \$1,500.00, as the end of September, 2013 would have been the earliest time that the tenant could legally have ended the tenancy.

I also find that the landlord is eligible for advertising costs in the amount of \$154.56 because the landlord attempted to mitigate her losses by re-renting the suite at the earliest opportunity. However, I find that the tenant prevented the re-rental of the suite by continually moving the date back and not providing the landlord with written notice committing to an end of tenancy date.

I accept the evidence of the landlord above on the balance of probabilities that the tenant has failed to pay the water utility and propane refill charges and award these amounts to the landlord. The tenant testified that these have already been paid, but in the absence of any evidence to support this, the landlord is eligible for these costs.

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 undermines the validity of the move-out inspection report referred to by the landlord throughout the hearing. As a result, I have not allowed this document when considering the landlord's claim for damages.

However, the landlord provided other supporting evidence and affirmed testimony which I have considered. As a result, I find that on the balance of probabilities, and in relation to the above evidence provided by both parties, the tenants failed to complete repairs and left the rental suite damaged and unclean contrary to the requirements of Section 37 (2) (a) of the Act. This is mainly based on the landlord's photographic evidence which shows the condition of the rental suite at the start of the tenancy and at the end of the tenancy.

In determining the amount the landlord is to be awarded for this cost, I have considered the useful life of the carpet and wooden flooring detailed in Policy Guideline 40 to the Act, which states that the useful life of carpet is 10 years.

The landlord testified that the carpet was 10 years old. Based on this, I find that the landlord is not entitled to any costs for the replacement of the carpet. However, in relation to the laminate wooden flooring, the landlord provided an e-mail from a contractor who stated that the wooden floor was saturated with pet urine throughout and that the smell was almost toxic. Although I have not awarded the landlord anything for the cost of the carpet due to the carpet's useful life, I accept the landlord's testimony that the carpet was pristine and in good condition and find that the tenant should be liable for the installation cost as well as the costs associated with the repair and treatment to the wooden flooring in the amount claimed by the landlord for \$850.00.

In relation to the damages claimed by the landlord for the cleaning costs, I do not accept the testimony of the tenant that the yard was too large for them to sufficiently and reasonably maintain, as this was a requirement of the tenancy agreement. The landlord provided sufficient photographic evidence showing the lack of maintenance to the yard and the condition of the rental suite at the end of the tenancy. However, I am not satisfied that it took two people 16 hours to rectify these damages, although I am convinced that the damages and cleaning would have taken the landlord a long time to complete. As a result, I award the landlord \$350.00 as an appropriate amount for the cleaning and yard work required.

I also award the landlord the cost of re-priming the garage floor in the amount of \$240.00 in relation to the cigarette smoke damage. I am satisfied on the balance of probabilities that the tenants failed to rectify the damage, even after an attempt to do this adequately.

It is my finding that the landlord be awarded a total amount of \$3,533.66 monetary compensation for this claim.

As the landlord has been successful in this matter, the landlord is entitled to recover from the tenant the \$50.00 filing fee for the cost of this application. Therefore, the total amount awarded to the landlord is \$3,583.66.

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 \$2,786.16.

### 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 **\$2,786.16**. 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: December 27, 2013

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Residential Tenancy Branch

