



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNR, MNDC, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rent and cleaning as well as an order to retain the security deposit in satisfaction of the claim.

The hearing was also to hear a cross application by the tenant seeking damages for a rent abatement, moving costs and storage expenses.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

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

Is the landlord entitled to monetary compensation for rent?

Is the landlord entitled to costs for cleaning?

Is the tenant entitled to monetary compensation in damages?

### **Background and Evidence**

The landlord testified that the tenancy was to begin on May 1, 2013. The rent was \$1,500.00 per month plus utilities and a security deposit of \$750.00 was paid. The landlord testified that the tenant vacated on May 21, 2013, and the security deposit was refunded.

The landlord testified that, because the tenant vacated on short notice, the landlord suffered a loss of \$985.46 rent for 19 days in June 2013, and this is being claimed.

Submitted into evidence was a copy of the tenancy agreement, copies of the move-in and move-out condition inspection reports, copies of communications and receipts.

According to the landlord, after signing the tenancy agreement, completing the move-in condition inspection and moving in, the tenant reported that the unit was not fit to inhabit due to mould and stated that they wanted to terminate the tenancy.

The landlord pointed out that the tenant had had ample opportunity to inspect the unit before committing to the tenancy. The landlord testified that he offered to have the unit inspected by a professional and remediate any mould concerns that exist. However, the tenant refused.

The landlord testified that he also offered to terminate the tenancy with a mutual agreement to end, but the tenant also rejected this offer, demanding monetary compensation.

The tenants dispute the landlord's claim for loss of rent for 19 days in June 2013.

The landlord testified that the tenant left the unit in need of cleaning at a cost of \$60.00 and carpet cleaning costing \$103.12, expenses which are also being claimed.

The tenant denied that they left the unit unreasonably clean and stated that the unit was left in a better state of hygiene when they left, because they had spent substantial time cleaning the rental unit when they moved in.

In regard to the tenant's application, the tenant acknowledged that they did inspect the unit, but stated that, while cleaning it, visible mould was found here and there in the unit. According to the tenant, they concluded that the rental unit was not safe to live in. The tenant testified that they declined the landlord's offer to have the mould inspected and remediated because the landlord had been defiant in regard to other complaints about the condition of the rental that they made and they felt that the risk was too high, given that they were expecting a newborn and had a young child.

The tenant stated that they felt they had no choice but to move for health reasons and found it necessary to break their lease.

The tenant feels that they are entitled to compensation of \$3,867.17 including:

- \$1,556.00 rent refund for May 2013,
- \$843.41 for moving costs, and
- \$1,467.76 for storage costs.

The landlord disagrees with the tenant's claim for compensation. The landlord pointed out that all of their good faith attempts to address the tenant's complaints, pursuant to a landlord's obligations under section 32 of the Act, were summarily rejected by the tenants. The landlord stated that the tenants chose instead to break their lease in violation of the Act by terminating the tenancy in a manner not permitted under the Act. The landlord's position is that the a monetary award to the tenants is not justified as they created their own losses by refusing to mitigate by either staying and cooperating with the landlord in rectifying the concerns, or by consenting to a mutual end to the tenancy.

### **Analysis:**

#### **Ending Tenancy By Tenants**

Section 45(3) of the Act states that, if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end a fixed term tenancy effective on a date that:

- (a) is not earlier than one month after the date the landlord receives the written notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that, to establish that a breach of a material term in the tenancy has occurred the claimant must satisfy the arbitrator that the following three components exist:

- There must be a clear term contained in the tenancy agreement
- This term must fit the definition of being "*material*"
- There must be a genuine breach of the material term.

Determining the materiality of a term requires a focus upon the importance in the overall agreement and it falls on the person relying on the term to present evidence that it qualified as a material term to both of the parties who had signed the agreement at the time.

A material term is a term that the parties had both agreed was so important that the most trivial breach of that term would give the other party the right to end the agreement and this question goes to the root of the contract.

In this instance, I find that the tenant has taken the position that the evidence of possible mould was considered to be a breach of a material term.

However, even if I did accept that this was a genuine breach of a material term, I find that the tenant failed to provide the landlord a reasonable opportunity to correct the situation and address the tenant's concerns the tenants terminated the fixed-term tenancy prior to the expiry date.

I also find that the tenant did not comply with section 45(3) of the Act in giving the proper notice required under the Act to terminate the tenancy for breach of a material term.

#### Landlord's Monetary Claim

An applicant's right to claim damages from another party is dealt with under section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find it important to note that in a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the landlord to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent, and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

I accept that the tenant breached the tenancy agreement by terminating the tenancy prior to the fixed term, not in compliance with the Act.

In regard to the tenant's argument that they were forced to leave, I find that the tenant's breach of the agreement was not triggered by a breach of a material term by the landlord. I find that the landlord offered the tenants alternatives, beyond those to which they are entitled under the Act. Given that the landlord did not commit any breach of the Act or agreement, I find that the tenant cannot rely on using a breach of a material term as a reason to limit their liability in compensating the landlord for losses that their own breach caused.

I find that the landlord tried to mitigate the loss, as is required under section 7(2) of the Act and was partly successful, but was unable to locate a replacement renter for more than two weeks following the tenant's departure.

I accept that the landlord lost 19 days rent. I also accept that the landlord dutifully attempted to also minimize his losses by taking action to investigate and remediate the tenant's complaints in the hope that the tenant would honour the tenancy agreement and remain living in the unit.

For this reason, I find that the landlord's claim for loss of rent meets all elements of the test for damages and the landlord is entitled to compensation for lost rent of \$885.46.

In regard to the landlord's claims for cleaning and carpet cleaning, I find that the evidence shows that there were pre-existing issues with the condition of the rental unit at the start of the tenancy and the tenant was required to do some cleaning at that time.

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that, while there were clearly some areas that the landlord felt were not left reasonably clean when the tenants vacated, most of the unit was left in a reasonably clean condition.

I note that the tenants had only lived in the unit for a relatively short time. Generally, the requirement to shampoo a carpet is usually considered as necessary under the Act if the tenancy exceeds one year.

Accordingly, I find that the landlord has failed to sufficiently meet the burden of proof to justify compensation for the cleaning costs, and they must be dismissed.

### Tenant's Monetary Claims

I find that the tenant's claims for damages and loss must be based on a violation of the Act by the landlord, as shown in the Test for Damages above.

I find that section 32 of the Act imposes a responsibility on the landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

In this instance, I find that the tenants reported the suspicion of mould to the landlord and the landlord did respond without delay. I find that the landlord was prepared to investigate and remediate any mould that was found. In this regard, I find that the landlord complied with their responsibilities under the Act.

At the same time, while I accept that the tenant did incur substantial losses, I find that these losses were not due to the landlord's violation of the Act, but were attributable to the tenant's failure to comply with the Act in regard to terminating a fixed term tenancy. I also find that the tenants failed to make a reasonable effort to properly mitigate the loss by maintaining the tenancy or agreeing to the first mutual agreement to end the tenancy proposed by the landlord.

Based on the above facts I find that the landlord has established a total monetary claim of \$935.46 comprised of \$885.46 for the loss of rent for June 2013 and the \$50.00 fee for this application.

Based on the evidence before me, I find that the tenant has not sufficiently proven entitlement to any monetary compensation for their expenses and losses.

I hereby grant the Landlord a monetary order for \$935.46. This order must be served on the tenant and may be enforced through Small Claims Court if not paid.

The remainder of the landlord's applications is dismissed without leave. The tenant's application is dismissed in its entirety without leave to reapply.

**Conclusion**

The landlord is partially successful in the application, the remainder of which is dismissed. The tenant's application is dismissed in its entirety without leave.

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: February 20, 2014

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Residential Tenancy Branch

