



# 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 in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages – Section 67;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation for loss – Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on July 1, 2012 for a fixed term ending December 31, 2013. Rent of \$1,900.00 is payable monthly and at the outset of the tenancy the Landlord collected \$1,000.00 as a security deposit and \$500.00 as a pet deposit.

The Landlord states that although the Parties conducted a move-in inspection and completed a report, no copy of this report could be found. The Tenants state that although a walk through was done, no report was completed.

The Landlord states that the Tenants moved out of the unit in on or before October 31, 2013 and claims unpaid rent for November and December 2013. The Landlord states that the unit was advertised for \$2,000.00 per month with and provided a copy of the advertisement.

The Tenants state that they were having problems with the provision of water to the unit and that after giving notice to end the tenancy, three of the Tenants moved out of the unit on or before August 31, 2013. The 4<sup>th</sup> Tenant remained in the unit and after advertising by both the Tenant and Landlord for another tenant, a 5<sup>th</sup> person moved into the unit in the middle of August 2013. The 4<sup>th</sup> Tenant states that at the beginning of September 2013 she informed the Landlord that she would be moving out of the unit as of the end of October 2013 but moved out of the unit at the end of September leaving the 5<sup>th</sup> person in the unit. The 4<sup>th</sup> Tenant states that rent was paid for both September and October 2013. The Tenants dispute that they owe any rent as they gave a month's notice to vacate and although they attempted to provide written notices, the Landlord refused to provide his new address and no longer lived at the address contained in the tenancy agreement.

The Landlord states that although he was aware that the Tenants wanted to end the tenancy he never agreed to an end prior to the fixed term date and was not prepared to enter into an agreement with the 4<sup>th</sup> Tenant alone. The Landlord states that he approved of the 5<sup>th</sup> person moving into the unit and that after providing a month's notice this person moved out at the end of October 2013. The Landlord states that this person and the Landlord attempted to negotiate an agreement for this person to stay in the unit but that they failed to reach an agreement.

The Landlord states that he withdraws a claim noted as \$12.19 as he does not recall this expense. The Landlord also withdraws the claims in relation to meals and mileage. The Landlord states that he did not do any cleaning in the unit but spent the time hauling out garbage and articles left behind by the Tenants and delivering them to various places including the dump.

The Landlord states that the Tenants left the unit unclean and damaged and claims as follows:

- \$1,250.00 for the Landlord's labour to remove articles and garbage from the unit (noted in the application as cleaning time by 2 people for 50 hours at \$25.00 per hour);
- \$682.50 for the cost of cleaning by a cleaning company;
- \$42.50 for the cost of replacing light bulbs;
- \$122.08 for the replacement of a light fixture;
- \$210.00 for carpet cleaning;
- \$480.00 for the cost to replace a damage freezer door skin.

The Tenants agree that the unit was not cleaned and stated that they believed the security deposit would more than compensate the Landlord for these costs. The Tenants state that several light bulbs were missing at move-in and that the freezer door was damaged at move-in as well. The Tenant states that she and the 5<sup>th</sup> person cleaned the carpets before the end of September 2013. The Landlord states that the Tenants left the carpets stained.

The Landlord states that the Tenant failed to pay hydro costs and claims \$356.34 for the period September and October 2013. The Landlord did not provide an invoice for this amount. The Landlord provides emails dated from January and February 2013 that refers for a hydro amount owed. The Tenant states that she paid for the utilities but never saw a bill.

The Landlord states that the tenancy agreement provides that the Tenants leave the propane tank full at the end of the tenancy. The Landlord states that the Tenants failed to fill the tank and claim refill costs of \$93.29. The Tenants agree that the propane was not filled at the end of the tenancy.

The Landlord states that the Tenants failed to return the keys and claim \$150.00 to rekey the unit. The Landlord states that he had to rekey the unit as he did not have a master set of keys. The Tenants state that they never had keys for the first year of the tenancy and were not concerned about leaving the unit unlocked while they were gone as it is in a safe community. The Tenant states that she left the keys in the unit for the 5<sup>th</sup> person.

#### Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the tenancy agreement, I find that the four Tenants were obligated to rent the unit until the end of December 2013. Although each moved out separately, I find that the tenancy ended when the last of the four Tenants moved out of the unit. As such the Tenants are responsible for any lost rental income caused by their early moved out. Accepting that the Landlord took reasonable efforts to mitigate his losses by advertising the unit, by increasing the rent, the landlord reduced his chances of re-renting the unit and therefore contributed to a portion of his loss. As a result, I find that the Landlord has only substantiated a loss of one month rent and is therefore entitled to **\$1,900.00**.

Given the photos of the unit, I find that the Landlord has substantiated that the Tenants left a significant amount of articles behind. However, the amount of time claimed by the Landlord appears excessive in relation to this evidence. As a result I find that the Landlord is entitled to a reduced amount of **\$600.00**. Given the photos, the cleaning invoice and the Tenant's evidence that the unit was not cleaned at the end of the tenancy, I find that the Landlord has substantiated an entitlement to the costs of cleaning in the amount of **\$682.50**. Given the lack of a move-in condition report and considering the Tenant's evidence of pre-existing damages, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused the losses claimed and I dismiss the claims for the costs to replace light bulbs and light fixture and to repair the freezer door skin. Given the photos of the carpets I find that the Landlord has substantiated that the carpets were not left in a reasonably clean condition and that the Landlord is therefore entitled to the cost of **\$210.00** for carpet cleaning.

Given the lack of a bill or invoice or accounting particulars and marginal email evidence of some amount owing in February 2013 and considering the Tenant's evidence that the utilities were paid, I find that the Landlord has failed to substantiate the costs claimed for the hydro and I dismiss this claim.

Based on the undisputed evidence in relation to the propane, I find that the Landlord has substantiated its claim of **\$93.29** for the costs to fill the tank. Given the Landlord's evidence of failure to keep a master set of keys, I find that the Landlord has not substantiated that the Tenants caused the Landlord to rekey the unit. I therefore dismiss this claim.

As the Landlord has been primarily successful with his claim I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,585.79**. Deducting the combined security and deposit of **\$1,500.00** plus zero interest leaves **\$2,085.79** owed by the Tenants to the Landlord.

Conclusion

I Order the Landlord to retain the security and pet deposit plus interest of \$1,500.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$2,085.79**. If necessary, this order may be filed in the Small Claims Court 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: April 4, 2014

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Residential Tenancy Branch

