



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on December 13, 2014. Canada Post tracking numbers were provided by the landlord in evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

### Background and Evidence

The landlord testifies that this tenancy started on May 09, 2013 for a month to month tenancy. Rent for this unit was \$1,600.00 per month and was due on the 1st day of each month in advance. The tenants paid a security deposit of \$800.00 on May 09, 2013. The tenants and landlord attended a move in condition inspection at the start of the tenancy and a report was completed at that time. At the end of the tenancy the tenants were advised of a date to do the move out inspection however the tenants did not attend on the move out day and the tenants cell phones were disconnected along with the house phone. As the landlord had no way to contact the tenants the move inspection was subsequently completed in the tenants' absence. The tenant provided a new phone number and forwarding address on November 21, 2013.

The landlord testifies that the tenants had given notice to end the tenancy on September 11, 2013. This Notice had an effective date of October 11, 2013. The tenants moved out on or about that that date. The tenants failed to pay rent for October and had provided insufficient notice to the landlord. The landlord seeks to recover a loss of rent for October, 2013 of \$1,600.00.

The landlord testifies that the tenants failed to do yard work as detailed in the addendum to the tenancy agreement. This addendum states that the tenants are responsible for lawn mowing, watering and trimming and to clear up any dog feces. At the end of the tenancy the landlord testifies that they found the tenants had not taken care of the lawn, the weeds and the trimming. The landlord engaged a lawn care company to do this work and seeks to recover the costs incurred of \$65.63 to cut the grass. A further \$30.00 was paid to the landlord's handyman to do the trimming work. The landlord has provided invoices in evidence for this work.

The landlord testifies that during the tenancy the female tenant informed the landlord that a lot of the outlets were not working. The landlord sent her handyman to the unit and this handyman checked all the outlets and only found one that was not working.

However the handyman did find that the tenant must have turned off the breakers as these had to be switched on again. The landlord testifies that she incurred a cost of \$15.00 for her handyman to attend the unit and seeks to recover this from the tenants. The landlord has provided a copy of the invoice in evidence.

The landlord testifies that new carpets had been laid in the unit on the day the tenants took possession. At the end of the tenancy the landlord found that the tenants had not cleaned the carpets and the carpets had been left stained with pink nail polish, chocolate milk and dog urine. The landlord had the carpets cleaned and seeks to recover this cost of \$371.60. The landlord has provided an invoice for this work in evidence.

The landlord testifies that after the tenants had vacated the unit the landlord opened the dishwasher and found it to be full of dirty water and some of the tenants' dishes. The tenant had not reported that the dishwasher was not working. The landlord called out an appliance repairman and was charged \$50.00 for the call out fee. The landlord testifies that it would have been too expensive to use that repairman so the landlord had her handyman look at the dishwasher. The landlord testifies that her handyman found that the dishwasher was very clogged with noodles and other food substances along with bits from Barbie dolls. The dirty water was sucked out, the filters cleaned and the dishwasher worked fine. The landlord seeks to recover the cost of this repair of \$90.00 and the \$50.00 cost for the service call. The landlord has provided copies of invoices for this work in evidence.

The landlord testifies that she found a lot of dog feces in the yard at the end of the tenancy and had to clean this up herself. The landlord also did some of the cleaning in the unit as it had been left filthy. The landlord seeks to recover \$90.00 for her own work and also seeks to recover a further \$160.00 for the work completed by the house cleaning company who were engaged by the landlord to clean the rest of the unit. The landlord has provided invoices for this work in evidence.

The landlord testifies that the patio door screen had been damaged by the tenants' dog. This screen was left with scratches and the screen was shredded by the tenants' dog. The landlord has not yet had this screen replaced but has provided a quote in evidence of \$87.96. The landlord seeks a further amount of \$10.00 or more for the handyman's labour charges as quoted to refit this screen.

The landlord testifies that the unit had been freshly painted prior to this tenancy commencing. The tenants had put a stencil up on one wall and the tenants had attempted to remove the stencil however this has damaged the paper on the drywall. The tenants' children had also written on the wall. The landlord testifies that this stencil will have to be carefully removed; the glue will need to be removed, the wall will require repair and repainting and the writing will have to be sprayed and painted over. The landlord has provided a quote in evidence from the handyman who has estimated that this work will take six hours at \$17.00 per hour to a total amount of \$120.00.

The landlord testifies that prior to this tenancy the landlord had placed some stick on mirrors to cover some holes in the doors. The tenants had removed these mirrors from the doors. The landlord seeks to recover the replacement costs for the mirrors of \$17.00. The landlord has not provided an invoice or receipt in evidence.

The landlord testifies that she found the handle to the stove had been repaired with a wood screw. During a showing of the unit the stove handle came off in someone's hand and the wood screw was discovered. The stove had also been left dirty. The landlord's handyman cleaned the stove and repaired the handle and has given the landlord an invoice for this work for \$110.00. The invoice indicates that this work took the handyman 5.5 hours to complete at \$20.00 per hour. The landlord notes however that this invoice also contains a repair to an electrical outlet which the landlord agrees is her responsibility. The landlord therefore reduces this part of the claim to take into account the time spent on that electrical repair.

The landlord requests to keep the security deposit in partial satisfaction of her monetary claim.

### Analysis

The tenants did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords documentary evidence and sworn testimony before me.

With regard to the landlords claim for a loss of rent for October, 2013; I refer the parties to s. 45(1) of the Act which states:

**45 (1)** *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice, and*

*(b) 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.*

As the tenancy agreement states that rent is due on the first day of each month the tenants should have given notice to end the tenancy the day before the day that rent was due in order to be effective at the end of the following month or a time after. As the tenants did not give Notice until September 11, 2013 the earliest the tenants could legally end the tenancy would have been October 31, 2013. Therefore I find in favour of the landlords claim to recover unpaid rent for October, 2013 of **\$1,600.00**.

With regard to the landlords claim for damage to the unit, site or property; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Having reviewed the evidence before me I find the landlord has met the burden of proof that the tenants did not comply with the tenancy agreement addendum with regard to the yard work. I therefore uphold the landlords claim to recover costs incurred of **\$93.63**.

I find the landlord has not met the burden of proof with regards to the cost for the landlord's handyman to come out and look at the outlets after the tenant complained they were not working. If there had been an electrical problem then it is the landlord's responsibility to inspect and repair this. Even though only one outlet was found not to be working the landlord would still have had to determine this. The landlords claim for \$15.00 is therefore dismissed.

With regard to the landlords claim for carpet cleaning; the tenants are required to leave the rental unit in a reasonably clean condition. I find the tenants left the carpets stained

with nail polish, chocolate milk and dog urine as determined on the move out inspection. I therefore uphold the landlords claim for carpet cleaning of **\$371.60**.

With regard to the landlords claim for the dishwasher repair; the landlord has established that the tenants did not inform the landlord that the dishwasher was broken. The landlord was able to mitigate the loss by having it cleaned out and drained before engaging the services of an appliance company. I therefore find the landlord has met the burden of proof regarding the tenants' negligence in not maintaining the dishwasher correctly during the tenancy which allowed food debris and other items to block the filter. The landlord is therefore entitled to recover the cost of **\$50.00** for the service call our fee and **\$90.00** for the repair.

With regard to the landlords claim for picking up dog feces and cleaning; I am satisfied that the landlord did complete this work herself and therefore the landlord has met the burden of proof regarding her claim for \$90.00. Furthermore I am satisfied from the evidence before me that the tenants did not leave the rental unit in a reasonably clean condition and therefore the landlord is also entitled to recover the cleaning costs of **\$160.00**.

With regard to the landlords claim for the screen door repair; the quote provided appears to be for the screen door. I therefore find the landlord has met the burden of proof that the screen door requires replacement and I uphold the landlords claim for **\$87.96**. I am not however satisfied that the costs to replace this screen door have been established as it would be a quick fix to slot a new door into the tracks.

With regard to the landlords claim for wall repair and painting; I am satisfied with the evidence before me that the landlord has met the burden of proof in this matter and I therefore uphold the landlords claim for **\$120.00**.

With regard to the landlords claim for replacement mirrors; the landlord has not provided a receipt showing the actual costs to replace these mirrors for the doors. I therefore find

the landlord has not met the burden of proof in this matter and the landlords claim for \$17.00 is dismissed.

With regard to the landlords claim for the costs incurred to clean and repair the stove; I am satisfied that the tenants failed to leave the stove clean as indicated on the move out inspection report. Furthermore I am also satisfied that the stove handle had been put back on with an unsuitable screw and this also required repair. As the landlord agrees that the invoice for this repair also included a repair to an electrical outlet I must reduce this portion of the claim accordingly. I have therefore deducted \$20.00 from this invoice for the electrical repair and find the landlord is entitled to recover **\$90.00**.

The landlord has requested to keep the security deposit. The landlord has not filed an application to do so but has made mention of it in the letter sent to the tenants that has been provided in evidence. The tenants would therefore be aware that the landlord intended to set off the security deposit against the cost for damages and cleaning. I will therefore allow the landlord to amend her application. Furthermore I refer the parties to sections 38(4), 62 and 72 of the *Act*; when taken together these sections give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep the security deposit of \$800.00 in partial satisfaction of her claim.

The landlord is also entitled to recover the **\$50.00** filing fee from the tenants. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(91) of the *Act* for the following amounts:

Loss of rent for October	\$1,600.00
Damages and cleaning	\$1,063.19
Filing fee	\$50.00
Less security deposit	(-\$800.00)
Total amount due to the landlord	\$1,913.19



Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,913.19**. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced through the Provincial Court 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 03, 2014

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Residential Tenancy Branch

