



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlords – MNR, MND, MNSD, MNDC, FF

For the tenant - MNSD

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlords applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlords to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order to recover double the security deposit.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

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

- Are the landlords permitted to keep all or part of the security deposit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a Monetary Order to recover double the security deposit?

### Background and Evidence

The parties agree that this tenancy started originally on December 01, 2012 and a new term was entered into on June 01, 2013 for a fixed term tenancy due to expire on November 30, 2013. Rent for this unit was \$1,600.00 per month and was due on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$800.00 on November 01, 2012. The landlord did not conduct a move in or a move out inspection of the unit with the tenant at the start or end of the tenancy. The tenant provided a forwarding address in writing to the landlords on January 01, 2014.

The landlord attending testifies that the tenant failed to pay all the rent for December, 2013 leaving an unpaid amount of \$300.00. The tenant kept giving the landlord excuses about paying the rent arrears and finally told the landlord to take it out of the security deposit. The landlord testifies that as the tenant did not put this in writing the landlord has not been able to keep \$300.00 of the security deposit and so the landlords request a Monetary Order to recover \$300.00.

The landlord seeks a loss of rental income for January, 2014 of \$1,600.00. The landlord testifies that the tenant was supposed to vacate the rental unit on January 01, 2014 by 1.00 p.m. and a new tenant was waiting to move into the unit. However the tenant did not finish moving out until later and when the landlord went to the unit to collect the keys to give to the new tenant this tenant had taken the keys to her new unit and had to go there to retrieve them. The landlord testifies that the tenant did not hand over the keys until 4.30.p.m. and by this time the incoming tenant was so upset that he told the landlord that his friends who had come to help him move had all left and he was not

going to be moving into the rental unit. The landlord testifies that they started to re-advertise the unit but it was not re-rented until February 01, 2014.

The landlord testifies that when the tenant moved into the unit there were two cable boxes. The tenant ordered some additional cable boxes and Shaw sent a contractor round to fit these. The landlord had contacted Shaw and was told that the contractor would have spent two hours at the unit and fitted four new receptacles. The contractor had run extra wiring around the exterior of the house and drilled holes into the walls to run the cables. They also used anchors for the cables every three feet which has made a mess of the stucco. Shaw Cable also drilled holes in the hardwood flooring to run cable inside the house. All this was done without the landlords' permission. The landlord testifies that he has to repair the exterior walls and the holes in the floor. The landlord has provided a quote for the exterior wall repair for \$400.00 and flooring quote to repair the three holes of \$830.00. The holes in the floor are approximately one and half inches. To repair these holes the baseboards will need to be removed, the damaged planks need to be removed and replaced and the baseboards refitted.

The landlord seeks to recover the cost for a repair to a closet. The landlord testifies that the tenant had not informed the landlord that the wire shelving in the closet had broken. The landlord saw this when he went to the unit. As these are older fittings they had to be replaced. The landlord testifies that he did this work himself and seeks to recover the cost of \$200.00 for parts and labour. The landlord has not provided a receipt in evidence for the parts.

The landlord testifies that the tenant left a freezer, metal bed frames, shelves, a coffee table and eight bags of garbage at the unit. The landlord paid his son \$200.00 to remove these items and take them to the dump. The landlord has not provided an invoice for this work.

The landlord seeks to keep the security deposit in partial satisfaction of this claim. The landlord also seeks to recover the \$50.00 filing fee from the tenant.

The tenant disputes the landlords' claims. The tenant testifies that she did owe \$300.00 for December, 2013 as she had sustained an injury at work. The tenant testifies that she realized that she could no longer afford to pay the rent of \$1,600.00 so asked the landlord if she could move out. The landlord said he would reduce the rent by \$300.00 if the tenant agreed to stay as it would be cheaper for the landlord. The tenant said she would stay if the landlord agreed to a month to month tenancy and repaired the damaged things in the unit. As the landlord did not make the repairs as agreed the tenant gave notice to end the tenancy. The tenant agrees that she had told the landlord to keep \$300.00 from her security deposit to cover the unpaid rent.

The tenant disputes the landlords claim to recover a loss of rent for January, 2014. The tenant testifies that she knew she had to vacate the unit on January 01, 2014 but no specific time was agreed. When it got to around 12.30 p.m. the tenant's brother in law, who was helping the tenant move, called the landlord and they agreed to meet in an hour for the landlord to get the keys. The tenant arrived back at the unit at 2.00 pm. But could not find the keys and had to drive back to the new unit to get them. The tenant testifies that she arrived back at the unit around 3.00 p.m. and gave the keys to the landlord. The tenant disputes that she should be held responsible because the new tenant decided not to move in.

The tenant testifies that she walked around with the landlord and he said that everything was fine and the tenant would get her security deposit back. However because the incoming tenants security deposit cheque was NSF the landlord said the tenant would have to wait two weeks as the landlord did not have the money to return the tenant's security deposit.

The landlord refers to the letter from the man he took to the unit with him to witness the tenant moving out. The landlord testifies that this friend has documented that the tenant did not vacate until 4.30 p.m.

The tenant disputes that she left furniture in the unit. The tenant testifies that the freezer, shelving and coffee table along with some end tables belonged to the previous tenants. The tenant testifies that when she looked at the unit there was also a cabinet which had a sticker on it saying free. The tenant asked the landlord to ask the previous tenants if the tenant could keep that cabinet and they agreed. The tenant testifies that she removed the cabinet but left the remainder of the items as they did not belong to the tenant.

The tenant testifies that Shaw did not drill holes in the exterior walls or holes in the flooring to install cables. The tenant testifies that she called Shaw and was told that consent must be given before a contractor can drill any holes in a property. The tenant testifies that when she viewed the house the landlord said there were holes in the floor. The Shaw cable man said as the holes were already there he could run his cables through them. The tenant testifies that the exterior wall also had holes drilled and the cable man used the existing holes and anchor points for the new cables. When the tenant moved out Shaw came to remove the boxes but left the cables in place for the new tenants to use.

The tenant testifies that two weeks after moving into the unit the shelving in the closet broke. The tenant testifies that she had called the landlord about this and the landlord asked the tenant when she wanted it repaired. The tenant testifies that it was never fixed during her tenancy.

The tenant testifies that the garbage bags were put out on the corner for collection. The garbage pick up is on a Tuesday each week the day after the tenant moved out.

The landlord disputes the tenant's testimony. The landlord testifies that when the tenant came back with the keys at 4.30 p.m. her brother in laws truck was still loaded with belongings. The landlord testifies that the tenant said garbage day was the day after however if garbage day is on a Tuesday then the tenant moved out on a Wednesday so the garbage would have sat in the street for a week. The landlord testifies that he was

told by the tenant's mother that the tenant had a dumpster at her new place and would come and take the garbage there. The landlord disputes that there were existing holes in the walls or floors. The landlord testifies that there were only two holes for the existing cable which was put in when the house was built. The tenant allowed Shaw to put in the holes for the extra boxes and gateway system.

The landlord cross examines the tenant and asks the tenant when she viewed the unit was there some stuff in the unit that was for free and did the tenant have conversations with the previous tenants about taking these items. The tenant responds that she has never had a conversation with the previous tenants the only item marked free was cabinet which the tenant took possession of after the landlord contacted the previous tenants to ask them

The tenant seeks to recover double the security deposit as the landlord did not do a move in condition inspection at the start of the tenancy and has not returned the tenants security deposit within the time frame allowed.

The tenant calls her witness PS. The witness is the tenant's brother in law who helped the tenant move in and out. The witness testifies that when they viewed the unit it was with the tenant, the landlord and the tenant's mother. The previous tenants were not at the unit. There was a big freezer, a cabinet, a wooden table and other items. The witness testifies that he asked the landlord about these items and was told that they had been left behind and the tenant could use them if she liked. The witness testifies that the holes in the floor were there at the start of the tenancy. The landlord had looked around the unit at the end of the tenancy and said everything looked good but that he needed more time to look at the unit. The witness testifies that the closet rails fell down shortly after the tenant moved in. The witness recalls the tenant calling the landlord about it but the landlord said he was going on vacation. The tenant called a couple of times after but the closet was never fixed.

The landlord cross examines the witness and asks the witness if the tenant was with the witness on the walk through. The witness responds that she was but had to go and get the keys. The landlord asks if the tenant was gone for 40 minutes. The witness responds yes she went to look for the keys. The landlord asks if the witness recalls seeing a man sitting outside in the car with the landlord. The witness responds that he does not know. The landlord asks when the tenant was looking for a house to rent did the witness, the tenant, some kids and a friend look at the house and see free items. The witness responds that the previous tenants had left and it was the witness and tenant the previous tenants moved out on the same day the tenant moved in. The landlord asks the witness if the witness recalls calling the landlord at 1.00 p.m. to update the landlord on the move and telling the landlord it would be closer to 3.00 p.m. before they were finished. The witness responds that he called the landlord around 12.00 noon and said they needed another half an hour. The witness testifies that the tenant vacated around 3.00 p.m. or shortly after. The landlord asks the witness if he said to the landlord that he had noticed the bed frames in a closet and would come to pick them up. The witness testifies that yes he did. The bed frames belonged to the witness but the landlord did not let the witness know when he could come and pick them up and the witness could not access the unit. The landlord asks the witness if he recalls the garbage bags in the driveway. The witness testifies that yes they were put out for garbage collection.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses. With regard to the landlords claim for unpaid rent for December, 2013; Section 26 of the Act states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The tenant agrees that there is outstanding rent of **\$300.00** for December consequently I uphold the landlords claim to recover this amount. With regard to the landlords claim for a loss of rental income for January of \$1,600.00; the *Act* states that a tenant must vacate a rental unit by 1.00 p.m. on the last day of the tenancy unless another time is agreed. The tenant did not vacate the unit by 1.00 p.m. and the exact time the tenant did leave the rental unit is in dispute. I find there is insufficient corroborating evidence to show what time the tenant actually left the unit. The landlord has claimed that the incoming tenant paid a security deposit and rent for the unit but then could not move in as the tenant had not vacated and so refused to move in. I refer the parties to the Residential Tenancy Policy Guidelines #3 which refers, in part, to when a tenant is deemed to have overheld at a unit. Section 44 of the *Act* set out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provision, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent. I am satisfied that the tenancy ended on January 01, 2014 and the tenant did not vacate the rental unit by 1.00 p.m. the tenant did not pay rent for this day and therefore I find the landlord is entitled to recover rent on a *per diem* basis as the incoming tenant who was due to pay rent from January 01, 2014 was unable to access the unit at 1.00 p.m. Consequently the landlord has established a claim for **\$51.61** for one day rent.

However the landlord also seeks a loss of rent for the entire month of January, 2014. I am not satisfied that the tenants actions in moving out a few hours later would be sufficient for the incoming tenant to be able to change his mind about moving into this unit. The landlord cannot therefore hold the tenant responsible for any loss of rent for the remainder of January, 2014 as the landlord had entered into a new tenancy agreement with the incoming tenant by accepting rent and a security deposit even if these cheques later went NSF.

With regard to the landlords claim for damage to the unit; the parties agree that no move in condition inspection was conducted at the start of the tenancy. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed. The tenant has disputed that she is responsible for allowing the Shaw Cable man to drill holes in the exterior wall and in the flooring, the tenant and the tenants witness has testified that the holes in the flooring were there at the start of the tenancy. I am not satisfied that the landlords have provided sufficient evidence to meet the test for damage or loss claims to show that the holes were caused by the tenants actions or neglect and therefore the landlord has not met the burden of proof in this matter and this section of the landlords claim is dismissed.

With regard to the landlords claim for damage to the closet; the landlord must show that the closet was damaged through the tenant's actions or neglect and not through normal use. The landlord agrees that the closet fittings were old. The landlord has insufficient evidence to show that the tenant's actions or neglect through improper use of the closet caused the railings to fall. Furthermore the landlord has not provided sufficient evidence to show the actual cost to replace the closet fittings. Therefore I must dismiss the landlords claim.

With regards to the landlords claim concerning the removal and disposal of a freezer and other furniture; the tenant's testimony contradicts that of the landlord as to which

furniture belongs to the tenant. I find on a balance of probabilities that this furniture was abandoned at the unit by the previous tenants and therefore is not the responsibility of the tenant to dispose of these items. Furthermore the landlord has not provided a receipt for dump fees showing the actual costs incurred. This section of the landlords claim is dismissed.

With regard to the landlords claim for garbage disposal; I find the tenant agrees that some garbage bags were left out for disposal at the curb. The tenant testifies that garbage pickup happens on a Tuesday and as it was New Year's Day it should have occurred the next day; however, January 01, 2014 was a Wednesday and so the tenant's garbage bags could have been left for another six days before garage collection. The landlord was therefore within his rights to dispose of this garbage. However the landlord is required to provide an invoice or receipt showing the cost for disposal and as the landlord has failed to do so I must limit the landlords claim to **\$15.00** to dispose of this garbage.

With regards to the tenants claim to recover double the security deposit; I refer the parties to s. 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlords did receive the tenants forwarding address in writing on January 01, 2014. As a result, the landlords had until January 16, 2014 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlords did file a claim on January 13, 2014. The tenant has testified that the landlord should not be able to file a claim as the landlord has extinguished his right to do so by not doing the move in condition

inspection report. However the *Act* only precludes the landlord from filing a claim against the security deposit for damages if the move in report is not completed pursuant to s. 24(2)9a) of the *Act*; it does not extinguish the landlord's right to file a claim for unpaid rent. Consequently the tenants claim for double the security deposit is dismissed. The tenant is however entitled to recover the balance of the security deposit after the landlords monetary claim has been satisfied pursuant to s. 38(6)(b) of the *Act*.

I Order the landlord to retain the following amounts from the security deposit. The balance of the security deposit must be returned to the tenant:

Unpaid rent for December, 2013	\$300.00
<i>per diem</i> rent for January 01, 2014	\$51.61
Garbage disposal	\$15.00
Less security deposit	(-\$800.00)
Total amount of security deposit to be returned to the tenant	(\$433.39)

As both parties have been partially successful with their claim I find the landlords must bear the cost of filing their own application.

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. I Order the landlord to retain the amount of **\$366.61** from the tenants security deposit. The reminder of the landlords claim is dismissed without leave to reapply.

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$433.39**. The Order must be served on the landlords. Should the landlords 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 30, 2014

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Residential Tenancy Branch

