



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants – CNR, OLC, FF

For the landlords – MNR, MNDC, O, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent and utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the *Act*), regulations or tenancy agreement; other issues; and to recover the filing fee from the tenants for the cost of this application. The tenants applied to cancel the Notice to End Tenancy for unpaid rent and for an Order for the landlords to comply with the *Act*; and to recover the filing fee from the landlords for the cost of this application.

The hearing went ahead as scheduled however the tenants failed to dial into the conference call during call. Therefore, no hearing took place regarding the tenants' application as the tenants have failed to present the merits of their application. Consequently, the tenants' application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, served in person to the male tenant only on April 02, 2014. As the female tenant has not been served with a copy of the landlord's hearing documents then any subsequent Orders made at this hearing will be in the name of the male tenant only. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The

responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

#### Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order to recover unpaid rent and utilities?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

#### Background and Evidence

The landlord LP gave testimony throughout the hearing. The landlord testified that this tenancy started on March 01, 2014. A tenancy agreement was signed by the parties on February 20, 2014 and a copy of this has been provided in documentary evidence. This was a fixed term tenancy which was not due to expire until February 28, 2015. Rent for this unit was \$1,750.00 plus two thirds of the utilities each month. Rent was due on the 1<sup>st</sup> of each month.

The landlord testified that the tenancy agreement states that this is a non smoking unit. The tenants started to smoke in the unit when they moved in and the smoke filtered into the landlords unit through the vents. The landlords and tenants signed a mutual agreement on March 06, 2014 that the tenants would vacate the rental unit on March 31, 2014 and the landlords would return the tenants security deposit of \$875.00 and the rent paid in cash for March of \$700.00. it was also agreed that the landlords would return the tenants' rent cheque for March which had not yet been cashed and the other

postdated rent cheques. A copy of this agreement has been provided in the landlord's documentary evidence.

The landlord testified that they returned the tenants' rent and security deposit and all postdated cheques as agreed; however, the tenants failed to vacate the rental unit on March 31, 2014 as agreed. The tenants continued to reside in the rental unit and did not pay back the rent returned for March or rent due for April. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on April 02, 2014. The 10 Day Notice was served in person upon the tenants on April 02, 2014. The Notice informed the tenants that they had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on April 11, 2014. The tenants did not pay the outstanding rent and although the tenants did file an application to dispute the Notice the tenants have not appeared at the hearing today. The landlord testified that the tenants vacated the rental unit on April 30, 2014. The total amount of unpaid rent for March and April, 2014 is now \$3,500.00.

The landlord testified that the unit had been re-rented for April 01, 2014; however that tenant was not able to take possession of the unit at these tenants had not vacated in accordance with their agreement. As soon as the tenants did vacate the unit the landlords started to advertise the unit for rent; however, the unit has not been re-rented for May, 2014 and the landlord seeks to recover a loss of rental income for May of \$1,750.00.

The landlord testified that the tenants were responsible for two thirds of the utility bills. The landlord testified that some of these bills have been served to the tenant; however, some of the bills have not been given to the tenants as the tenants have not provided a forwarding address for the landlord to serve documents upon them. The landlord has provided Fortis gas bills for a period between February 20 and March 20, 2014. As the tenants did not move into the unit until March 01, 2014 the landlord has calculated the daily rate of the utilities at \$5.87 a day X 20 days= \$117.52. The tenants' share of this bill is therefore \$78.34.

The second Fortis gas bill is for a period of March 20 to April 23 for \$213.60. The tenants' two thirds share of this bill is \$142.40. As this bill did not cover the last seven days of the tenancy and the landlord has not yet received the final bill for this period of seven days, the landlord has calculated that the final seven days at a daily rate of \$6.26 a day would be \$43.82. The tenants' two thirds share of that would be \$29.21.

The Hydro bill was for a period of January 23 to March 21, 2014 for \$454.34. As the tenants did not move into the unit until March 01, 2014 the landlords have calculated the daily rate of the utilities at \$3.45 a day for 21 days in March= \$72.52. The tenants' two thirds share is therefore \$48.35.

The landlord testified that they have not yet received a final Hydro bill for the period from March 22 to April 30, 2014. The landlord request that this final bill is calculated on the daily rate as the first hydro bill at \$3.45 a day for 40 days = \$138.00 and the tenants' two thirds share of this would be \$92.00.

The landlord testified that the tenants left the carpets in the unit stained after only two months of their tenancy. The landlord testified that they hired a carpet cleaning machine and cleaned the carpets themselves. The landlord seeks to recover the cost for the machine hire of \$64.82 plus an additional \$200.00 for the five hours work it took the landlord to clean the carpets in five rooms, the hallway and stairs. The landlord has provided a receipt for the carpet cleaner machine hire in documentary evidence.

The landlord testified that the tenants had not cleaned the unit satisfactorily; the landlord had to clean the kitchen and bathroom and mop the floors. The landlord testified that this cleaning took the landlord five hours to complete and the landlord seeks to recover \$200.00 for their time to do this work.

The landlord testified that the tenants took the internet router and garage opener with them when they moved out. The landlord will have to replace these items and although

the landlord has not yet done this the landlord testified that they estimate a new router will cost \$100.00 and a garage opener will cost \$100.00.

The landlord testified that the tenants left some of their belongings in the unit. This consisted of a computer table, an outside table, a chair, a cabinet and five boxes of kitchen stuff. The landlord testified that as the tenants have not returned to collect these items the landlord will have to take them to the dump and the landlord seeks to recover \$50.00 for the removal of these abandoned belongings.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord. 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 parties had entered into an agreement that the tenants would move out of the rental unit at the end of March, 2014. The landlord therefore returned the tenants' security deposit and rent paid for March and agreed not to cash the rent cheque for the remainder of the rent for March. The tenants did not uphold this agreement and failed to move from the rental unit. I find therefore as the tenants breached this agreement that the landlord is entitled to recover the rent that was returned to the tenants as the tenants continued to reside in the rental unit until April 30, 2014. I further find that as the tenants failed to pay any rent for April, 2014 that the landlord is also entitled to recover this and will receive a monetary award for \$3,500.00.

With regards to the landlord's claim for a, loss of rental income for May; this was a fixed term tenancy agreement which was not due to end until February 28, 2015. The parties had agreed that the tenancy could end at the end of March, 2014; however, as the

tenants breached this agreement then the tenancy reverted back to the agreement signed on February 20, 2014. The landlord was unable to re-rent the unit for May, 2014 and therefore in accordance with the tenancy agreement the tenants are responsible for any rent due up to the time they could have legally ended the tenancy or the time that the landlord was able to re-rent the unit. I therefore find in favour of the landlord's claim for a loss of rental income for May, 2014 of \$1,750.00.

With regard to the landlord's claim for unpaid utilities; I am satisfied from the evidence before me that the tenants owe for gas of \$220.74. I further find from the evidence before me that the tenants owe hydro of \$48.35.

With regards to the further amount of gas payments for the additional days that the landlord has not yet received a utility bill for; I find it is fair and reasonable that this has been calculated on the same daily rate and therefore it is my decision the landlord is entitled to a further amount for the final seven days of the tenancy for gas of \$29.21.

With regards to the further amount of hydro payments for the additional days that the landlord has not yet received a utility bill for; I find it is fair and reasonable that this has been calculated on the same daily rate and therefore it is my decision the landlord is entitled to a further amount for the final 40 days of the tenancy for Hydro of \$92.00. I am also satisfied that the landlords have been unable to provide a copy of the final utility bills to the tenants as the tenants have not provided the landlord with a forwarding address in writing.

With regards to the landlord's claim for carpet cleaning and cleaning of the unit; 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 respondents. 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.

The landlord has provided a carpet cleaning receipt in evidence for the hire of the machine used; however, the landlord has provided no further evidence to support their claim that the carpets were left stained by the tenants or that the rental unit was not cleaned by the tenants at the end of the tenancy. Furthermore the landlords have provided no evidence concerning the abandonment of the tenants' belongings or any costs incurred to remove these. The landlord has provided a copy of the move in condition inspection report but nothing to show that a move out inspection report was completed, with or without the tenants, to provide corroborating evidence to support these sections of the landlord's claim. Consequently, the landlord's claim for cleaning, carpet cleaning and removal of the tenants' belongings is dismissed.

With regard to the landlord's claim for the internet router and garage opener; The landlord has provided insufficient evidence to show the actual cost to replace these items as required in order for the landlord's claim in these matters to succeed. Consequently, these sections of the landlord's claim are dismissed.

As the landlord has been partially successful with their claim I find the landlord is entitled to recover the \$50.00 filing fee from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the *Act*.

The landlords paid a \$50.00 filing fee for their claim and have restricted their claim to \$5,000.00. Any amounts over \$5,000.00 would require the landlord to have paid a filing fee of \$100.00. The landlord has applied for \$5,000.00 and although the claim is higher I must therefore limit their claim to \$5,000.00.

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$5,000.00**. The Order must be served on the respondent (SH) only. Should the respondent 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: May 17, 2014

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Residential Tenancy Branch



