



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD

### Introduction

This hearing was originally scheduled for April 16, 2014 to hear the tenant's claim for a monetary order, including the return of the security deposit. Both parties appeared at that time. The landlord advised that they had filed an evidence package, which was not on the file. In addition, the tenant wished to file a second evidence package after the deadline for doing so had passed.

I decided that I would hear the tenant's oral testimony only and would continue the hearing on a subsequent date by which time everyone would have been served with the other's evidence package and would have had an opportunity to review and respond to it. Also by that time all of the written evidence would be on my file.

I did hear the tenant's examination in chief only and then the hearing was adjourned to April 30, 2014, a date and time convenient to all participants.

The hearing continued on April 30. I heard the balance of the tenant's evidence, the landlord's evidence, rebuttal evidence and argument on that date.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order and, if so, in what amount?

### Background and Evidence

The building in which the rental unit is located is owned and operated by a private foundation. It is for people who are over 55 years of age or disabled. The rent is 95% of the market rate for similar units. The other 5% is borne by the landlord.

The tenant, who is getting older and suffers from gout, was looking for a new home for he and his wife. He visited someone in this building and thought the layout would be

suitable for his needs. He was impressed with the exterior of the building, the entry and the grounds, which he described as immaculate. He put his name on the waiting list.

In August of 2013 he received a call that an apartment with a layout identical to the one he had seen would be available September 30. The tenant submitted an application for tenancy. In his letter he described the poor maintenance and dismal condition of his current residence, where he had lived for over twenty years. His application was accepted.

Sometime in September he met with the building manager and signed a tenancy agreement. The tenant never looked at the unit he was going to rent before signing the agreement. He said that based upon everything he had seen at the building he assumed that the unit itself would be in comparable condition. The agreement provided for payment of a monthly rent of \$1050.00, due on the first day of the month, and a security deposit of \$525.00.

The tenant gave his current landlord notice to end tenancy effective September 30.

Sometime later the tenant viewed the unit for the first time. He was not happy with what he saw and expressed his concern to the resident manager. The resident manager assured him that the unit would be "spic and span" when he moved in. In a subsequent conversation the resident manager told the tenant he would not be able to start work on the unit until the current tenant moved out on September 30.

The tenant arranged to move his belongings, except for the essentials, into storage and arranged to extend his tenancy at his old place to October 15. However, he had to be out of that place by the 15<sup>th</sup>.

The tenant received the keys to the rental unit on September 30 and his cheque for the October rent and the security deposit was negotiated by the landlord on October 1.

The tenant and his wife went to the rental unit on October 5. Although the carpets had been cleaned the tenant did not think that they, or the balance of the unit, had been properly cleaned. They were very disappointed with the condition of the flooring.

At the request of the building manager they prepared a detailed list of what they thought were deficiencies. Except for the flooring the deficiencies listed are primarily cleaning issues and minor repairs. They also took photographs of the unit, some of which were filed in evidence. They did this on October 6 and they gave the list to the acting building manager the following day.

On October 11 the foundation president, hereinafter referred to as the landlord, met the tenant and his wife at the rental unit. She testified that this was the first time she had been in the unit. She agreed that some repairs were required and that the unit had not been properly cleaned. She agreed to have the unit cleaned by professional cleaners and to have the carpets cleaned again. The tenant testified that they could smell urine in the carpets; the landlord testified that she could not.

The tenant wanted the flooring replaced. The landlord was prepared to do some of the other repairs on the tenant's list but was not prepared to replace the flooring. The landlord said the tenant got very upset during this meeting. The tenant said he panicked and started to scream but he did not swear.

Later that evening the landlord called the tenant. She said the company controller told her that the tenant had contacted him and wanted his money back. She was advising the tenant that the cheque was in the mail. He did not agree with the controller's statement and told the landlord he did not want his money back. He suggested that they leave matters for the following day.

On October 12 the landlord had a flooring installer look at the unit. This person wrote a letter saying that in his opinion the flooring was in poor condition and should be replaced. He also confirmed some of the cleaning issues.

On October 15 the carpets were cleaned for a second time and the unit was cleaned by professional cleaners.

On October 16 the tenant, his wife, and the landlord again met at the unit. The tenant and his wife were still not satisfied with the condition of the unit.

The landlord brought a cheque in the amount of \$1610.00 and a letter to end the tenancy to the meeting. The documents were in an envelope. The tenant refused to sign the letter. The tenant testified that the landlord did have an envelope but he never saw what was in it so he does not believe there was a cheque in it.

The landlord testified that she left the envelope in the unit because the tenant had the keys. The tenant said an envelope was never left in the unit. The landlord said that when they ultimately regained possession of the rental unit the envelope and its contents were still there.

The landlord testified that at this meeting she gave the tenant a 1 Month Notice to End Tenancy for Cause. She felt that the tenant had been verbally abusive to the staff throughout their interactions and she suspected that if the tenancy continued it would not be a happy arrangement. The tenant said he has never seen a notice to end tenancy.

The tenant admitted that the landlord did suggest ending the tenancy on October 16. He also admitted that he did not react very well. He said it was because he was panicked as he did not know where he would sleep that night.

In fact the tenant and his wife stayed at a hotel that night. Between October 15 and October 30 they stayed in three different hotels at a total cost of \$792.43.

Also on October 16 the tenant closed the hydro, telephone and Internet accounts he had opened for this unit and arranged to have his mail redirected from the unit to a mail box.

On October 24 the tenant and his wife wrote the landlord asking: "Are you planning to repair the deficiencies or you prefer not to do it (please state reason), terminate our rental agreement and refund the money received? Please, respond in written form only."

The landlord responded in writing on October 29:

" . . . When we met again on October 18, 2013, I was clear that it was unlikely we would be able to replace the carpet and linoleum in the kitchen. As that was unacceptable to both of you, I suggested that you would likely be happier in a different apartment building.

I offered to refund your deposit and October's rent at that time but you refused to accept the offer.

Please advise as soon as possible how you would like to proceed."

The next communication between the parties was not until November 12 when they spoke on the telephone. The tenant told the landlord that they would not be moving into the unit and they could rent it out. He refused to return the keys unless he was reimbursed for the October rent, the security deposit, and his expenses. The landlord was prepared to return the rent and the security deposit but was not prepared to pay anything for his expenses.

On November 19 the landlord received an order of possession effective two days after service pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent and a monetary order for the November rent.

On November 24 the tenant wrote the landlord a letter advising that they were “deem[ing] the rental agreement invalid due to breach of promises given and seek[ing] reimbursement of rent and security deposit paid plus additional costs of living which we sustained due to your acting.”

### Analysis

Section 16 of the *Residential Tenancy Act* states that the rights and obligations of a landlord and a tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 32(1) of the *Residential Tenancy Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that:

- complies with the health, safety and housing standards required by law; and,
- having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 7(1) states that if a landlord or a tenant does not comply with the Act, regulation or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 65 describes some of the orders an arbitrator may make as a result of finding that a landlord or a tenant did not comply with the Act, regulation or tenancy agreement. Subsection (f) provides for a reduction of past or future rent in an amount that is equivalent to a reduction in the value of a tenancy agreement.

Section 7(2) states a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, regulation or tenancy agreement must do whatever is reasonable to minimize the damage or loss.

It is common ground that the unit was not clean on October 1 and that it was not cleaned until mid-month. I find that the tenant is entitled to a rebate of one half month's rent for loss of use of the unit - \$525.00.

The main issue is whether the unit complied with section 32(1) after it was cleaned again, and in particular, did the flooring comply with the minimum requirements of the Act.

One of the pieces of evidence the tenant relies onto establish that the flooring did not meet that standard was a letter from a flooring installer. Although the tenant filed two separate packages of evidence with the Residential Tenancy Branch the letter was not included in either package nor was it served on the landlord in advance of the hearing. This does not meet the requirements of the Rules of Procedure or natural justice. When this omission became apparent at the end of the oral hearing the tenant did submit a copy to the Residential Tenancy Branch and presumably to the landlord.

Even if I do consider this letter as part of the tenant's evidence there are some issues with it:

- It describes the cleanliness of the flooring before it was cleaned for the second time so is not evidence of the cleanliness of the carpets on October 16.
- It describes damage to the kitchen vinyl floor, and discolouration to the bathroom vinyl floor which he ascribed to water damage. However, I know from other hearings that there are many possible causes for discolouration to vinyl flooring besides water damage.
- The tenant said he took over ninety photographs on October 6, of which he filed ten in evidence. None of the photographs submitted into evidence show anything other than a dirty kitchen floor. There are no photographs of the bathroom floor or the damage to the kitchen floor to corroborate the flooring installer's statements.

That leaves the tenant's evidence about the condition of the floors on October 16 as:

- his photographs which as mentioned previously show dirty, but undamaged and unstained, vinyl; a burn mark the size and shape of an iron on the carpet; and stains that existed prior to the second cleaning; and,
- the contradictory oral testimony of the parties.

The tenant has not established, on a balance of probabilities that on October 16 the unit, having regard to its age, character and location, was not suitable for occupation by a tenant. Accordingly, the tenant was bound by the terms of the tenancy agreement. No rebate for the balance of the October rent or compensation for any expenses claimed by the tenant will be awarded.

With respect to the tenant's claim for return of the security deposit the landlord has already obtained a monetary order against the tenant so no order with respect to the security deposit will be made.

The tenant did not pay a fee to file this application so no order on that point is required.

Conclusion

I find that the tenant has established a total monetary claim of \$525.00 and I grant the tenant an order under section 67 in this amount. 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: May 13, 2014

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Residential Tenancy Branch

