



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF, SS

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for: damages to the rental unit; unpaid rent or utilities; to keep the Tenants’ security deposit; money owed or compensation for loss or damage under the *Residential Tenancy Act* (the “Act”); to serve documents in a different way than required by the Act; and to recover the filing fee.

The Landlord appeared for the hearing and provided affirmed testimony during the hearing as well as written evidence prior to the hearing. There was no appearance for the Tenants during the hour long hearing and no submission of written evidence by them prior to the hearing.

### Preliminary Issues

As the Tenants failed to appear for the hearing, I focused my attention to the service of the Application and the Notice of Hearing documents by the Landlord to the Tenants in relation to the Landlord’s Application to serve documents in a different way than required by the Act.

The Landlord testified that at the end of the tenancy the Tenants had not provided a forwarding address in writing. The Landlord learnt through a friend of the Tenants, that they were living at the address detailed in the Landlord’s Application. The Landlord testified that he visited the address on February 19, 2014 where he saw the Tenants residing. The Landlord made his Application on the same day and served the Notice of Hearing and a copy of his Application to each Tenant by registered mail on February 21, 2014. The Landlord provided the Canada Post tracking receipts as documentary evidence for this method of service.

The Landlord testified that he had heard in the interim time that the Tenants had moved from the above address where he had registered mailed the documents to. However, the Landlord testified that on March 15, 2014 he came across an advertisement for free items being given away by the female Tenant. The Landlord responded to the advertisement and asked for the female Tenant's address to collect the free items; the female Tenant responded to the Landlord's enquiry and provided an address. A copy of the e-mail exchange and the advertisement containing the Tenant's name was provided as evidence for this hearing.

The Landlord attended the address on the same day with his brother where they saw both Tenants residing at the address. The Landlord testified that at this point he served each of the Tenants personally with another copy of the Application, the Notice of Hearing documents and a copy of the written evidence used in this hearing.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail or use this as grounds for a review. As a result, based on the undisputed evidence of the Landlord above in relation to the service of the hearing documents, I find that the Tenants were deemed served with the required documents five days after they were sent by the Landlord on February 21, 2014 as required by section 59(3) of the Act. Furthermore, I am equally satisfied that the Tenants were also served with the required documents personally on March 15, 2014 pursuant to section 71(2) (b) of the Act.

Based on the foregoing, in agreement with the Landlord, I amended the Landlord's Application to include the correct Tenants' address as determined by the Landlord on March 15, 2014, pursuant to section 64(3) (c) of the Act.

#### Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent and lost rent incurred in this tenancy?
- Is the Landlord entitled to monetary compensation for damage to the suite?
- Is the Landlord allowed to keep the Tenants' security deposit in partial satisfaction of the Landlord's claim?

#### Background and Evidence

The Landlord testified that this tenancy began on June 1, 2013. A written tenancy agreement was completed and provided as evidence for this hearing. The agreement

shows that the tenancy was a fixed term tenancy of one year after which it was intended to go onto a month to month basis. Rent was payable in the amount of \$1,300 on the first day of each month by the Tenants. The agreement also shows that the Tenants were responsible for utilities (including water) and the Landlord testified that the Tenants were responsible for putting the utilities into their name and paying the monthly bills.

The Landlord collected a \$650 security deposit from the Tenants at the start of the tenancy which he still retains. The Landlord testified that a condition inspection report was completed at the start of the tenancy but the Landlord failed to provide a copy of this for the hearing.

The Landlord testified that the Tenants' post dated rent cheques habitually bounced and by the summer of 2013, the Tenants had been instructed to pay their rent by cash to prevent this from occurring. The Landlord testified that he claims **\$2,600** in unpaid rent for the months of September and October, 2013 which still remain unpaid. In support of this the Landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") relating to each month. The Landlord had issued the Tenants one for September, 2013 rent on September 2 and one for October, 2013 rent on the day the rent was due; both Notices were provided as evidence. The Landlord was cautioned about issuing a Notice on the day rent is due pursuant to section 46(1) of the Act and the correct content of the Notice pursuant to section 52 of the Act as the October, 2013 Notice was not signed by the Landlord.

The Landlord testified that shortly after issuing the Tenants with the October, 2013 Notice, the Tenants vacated and abandoned the suite on October 5, 2013. As a result, the Landlord managed to re-rent the suite to new renters but in order to do this as quickly as possible he had to reduce the rent amount from \$1,300 to \$1,200. The Landlord was permitted, under Section 11.5 of the Rules of Procedure, to provide a copy of the tenancy agreement for the new renters. The signed copy of the new tenancy agreement submitted shows that the tenancy started on November 1, 2014 for a monthly rent payable of \$1,225, with no explanation by the Landlord as to why this amount differed to the amount of \$1,200 testified to during the hearing and why the Landlord claims \$100 loss of rent for the remainder of the eight months left in the fixed term tenancy in the amount of **\$800**.

The Landlord testified that the Tenants had put the water utilities in their name. However, in August, 2013 the Landlord was made aware by the utility company that the Tenants were not paying their water bills. As a result, the Landlord claims a total of **\$392.73** for unpaid water bills. The Landlord provided a copy of two water bills for the

period of May 11, 2013 to September 13, 2013 and one for a period of time after the Tenants had vacated the rental suite.

The Landlord testified that after the Tenants had left he discovered a large amount of damage to the rental suite. This included damage to the doors, walls, bathrooms, patio covering and carpets. The Landlord testified that he made several trips to the dump to remove a large amount of garbage that had been left behind by the Tenants. The Landlord then presented evidence in the form of 45 photographs and ten pages of invoices relating to the following amounts for damage to the rental suite.

Dump fees	\$136.78
Cleaning materials	\$37.15
Repair materials (bathroom sealants, lights bulbs, smoke detector batteries, wall fillers, electrical plates)	\$58.43
Replacement of a broken kitchen tap	\$80.86
Professional garbage removal services (4hrs @ \$40)	\$160
Replacement of a damage kitchen cabinet with a used cabinet	\$64.20
Home hardware materials	\$49.26
Replacement of broken interior door and door hardware	\$145.42
Replacement of all door locks and keys as the Tenants did not return keys at the end of tenancy	\$126
Replacement of one deadbolt (two were purchased and only one was used, therefore only half of the invoice amount is claimed)	\$53.21
Professional cleaning services for the unit including carpet cleaning	\$477.75
Landlord's time for repairs and cleaning of patio covering (40 hours @ \$20)	\$800
Cost of pictures for the hearing	\$31.41
<b>TOTAL</b>	<b>\$2,220.47</b>

As a result, the Landlord's total monetary claim is \$6,013.20.

### Analysis

I have carefully considered the undisputed affirmed testimony and the written evidence of the Landlord in this decision as follows.

In relation to the Landlord's claim for unpaid rent I accept the Landlord's undisputed testimony and the two Notices requesting payment from the Tenants for the months of September and October, 2013 that the rent for these two months is still unpaid in the amount of **\$2,600.**

In relation to the Landlord's claim for lost rent, policy guideline 3 to the Act explains that when a Tenant breaches a fixed term tenancy the Tenant is liable for the Landlord's losses; the policy guideline provides a very clear example of this, and states in part:

"As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy. For example, a tenant has agreed to rent premises for a fixed term of 12 months at rent of \$1000.00 per month abandons the premises in the middle of the second month, not paying rent for that month. The landlord is able to re-rent the premises from the first of the next month but only at \$50.00 per month less. The landlord would be able to recover the unpaid rent for the month the premises were abandoned and the \$50.00 difference over the remaining 10 months of the original term."

**[Reproduced as written.]**

The policy guideline also explains the circumstances under which a Landlord can make an Application to claim for losses for the remainder of the tenancy after the Landlord elects to end the tenancy. The policy guideline states, in part:

"If the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the notice to end the tenancy agreement is given to the tenant. The filing of a claim for damages for loss of rent and service of the claim upon the tenant *while the tenant remains in possession of the premises* is sufficient notice. Filing of a claim and service upon the tenant after the tenant has vacated may or may not be found to be sufficient notice, depending on the circumstances. Factors which the arbitrator may consider include, but are not limited to, the length of time since the end of the tenancy, whether or not the tenant's whereabouts was known to the landlord and whether there had been any prejudice to the tenant as a result of the passage of time. The landlord may also put the tenant on notice of the intent to make a claim of that nature by way of a term in the tenancy agreement. **However, where a tenant has abandoned the premises and the tenancy has ended with the abandonment, notice must only be given within a reasonable time after the landlord becomes aware of the abandonment and is in a position to serve the tenant with the notice or claim for damages.**"

**[Reproduced as written.]**

Based on the foregoing, I find that the Landlord put the Tenants on notice of an intention to claim for loss of rent for the remainder of the fixed term tenancy as soon as he became aware of the Tenants' address after they had abandoned the rental unit. In addition, I find that the Landlord mitigated his loss by re-renting the rental suite for the next month after the Tenants had left the rental unit and therefore the Landlord is entitled to compensation for the remainder of the fixed term tenancy.

In determining the amount to be awarded, I find that the amount claimed for by the Landlord in the Application and his testimony conflicted with the tenancy agreement provided as evidence after the hearing had concluded. The tenancy agreement shows that the new renters paid a reduced amount of \$75 per month. Therefore, I accept the documentary evidence which I relied on to award a loss of rent and find that the Landlord is entitled to **\$600** (\$75 x 8 months) for the loss for rent for the remainder of the tenancy.

In relation to the Landlord's claim for the water bills, I find that the Tenants were responsible under the tenancy agreement for these utilities and had put these into their names during the tenancy. Based on the water bills provided as documentary evidence to support the Landlord's testimony, I find that the Tenants would only be responsible for the period of time they were in possession of the property. As only two of the water bills related to this period, I am only prepared to award the Landlord these two amounts for a total of **\$362.07**.

I dismissed the Landlord's claim for costs relating to the production of photographs used in this hearing as the Act does not allow me to award for preparation costs associated with dispute resolution proceedings.

In relation to the Landlord's remaining claim for damages, I accept the Landlord's undisputed testimony which was supported by the Landlord's extensive photographic evidence that the Tenants caused damage to the rental unit. I find that the extent of the damage caused to the rental suite justified the cleaning and repair costs incurred by the Landlord some of which he employed professional contractors to complete and the remainder he completed by himself to mitigate these losses.

I also find that the Landlord provided sufficient evidence in the form of invoices to verify the losses and materials being claimed including invoices from the professional contractors employed and the several dump fees incurred as a result of the extensive garbage removal. As a result, I award the Landlord the remainder of the damages claimed in the amount of **\$2,189.06**.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$100.00** Application filing fee pursuant to section 72(1) of the Act.

Therefore, the total amount payable by the Tenants to the Landlord is \$5,851.13.

As the Landlord already holds the Tenants' \$650 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to section 38(4) (b) of the Act. As a result, the Landlord is awarded \$5,201.13.

### Conclusion

For the reasons set out above, I grant the Landlord a Monetary Order pursuant to section 67 of the Act in the amount of **\$5,201.13**. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenants fail to make payment in accordance with the Landlord's instructions.

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: June 05, 2014

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Residential Tenancy Branch

