



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF, O

### Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for damage to the unit, site or property, to retain the Tenant's security deposit, to recover the filing fee for this proceeding and for other considerations.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on March 11, 2014. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Are there damages to the unit and if so how much?
4. Is the Landlord entitled to compensation for the damage and if so how much?
5. Is the Landlord entitled to keep the Tenant's security deposit?
6. What other considerations are there?

### Background and Evidence

This tenancy started on September 1, 2013 as a fixed term tenancy with an expiry date of August 31, 2014. Rent was \$1,650.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$800.00 in advance of the tenancy. The Landlord said the Tenant moved out of the rental unit on March 1, 2013 without proper written notice and it broke the fixed term tenancy agreement.

The Landlord said she has made this application for lost rental income for March and April, 2014 in the amount of \$1,650.00 for each month totaling \$3,300.00 and for a list of damages to the property in the amount of \$4,925.00. On questioning the Landlord said that condition inspection reports were completed but not submitted in the evidence. The

Landlord said she thought the evidence was submitted with the application and was concerned that the evidence was not in the hearing package.

I should be noted that there was no corroborative evidence submitted for the hearing by either the Landlord or the Tenant. The hearing package contained the application, an amended application, 3 pages of hand written details of the dispute, the Notice of Hearing and 2 receipts for \$50.00 each for the filing fee.

The Tenant said his evidence was on his phone and he was unable to download it and submit it.

The Landlord said she thought she had submitted the evidence with the original package.

The Landlord continued to say that the Tenant broke the fixed term tenancy agreement and therefore is responsible for the March and April, 2014 rent in a total amount of \$3,300.00.

The Tenant said the people moved into the unit on March 1, 2014 when they were removing the last of their belongings. The Tenant said he did not know who it was but they were moving in.

The Landlord said it was her son that moved into the rental unit to provide security to the unit after the Tenants moved out. The Landlord said her son moved in on March 1, 2014 and he is still staying at the rental unit as of today.

The Tenant said if the Landlord's son moved into the unit then he is not responsible for lost rental income as the unit was occupied.

The Landlord said her son was just providing security and he was partially living at home and partially at the rental unit. The Landlord continued to say that she advertised the unit for rent on the internet and she showed the property to a potential tenant. The Landlord said she did not provide any evidence to support these claims.

With respect to the Landlord's damage claim the Landlord said some of the work has been done and some is still to do. The claim amounts are estimates and the Landlord did not provide any paid receipts for repairs completed.

The Tenant said he repaired many of the items on the Landlord's list of damages and some of the damage was there at the start of the tenancy. The Tenant said he signed the move in condition inspection report but he did not sign the move out condition inspection report as he did not agree to it. The Tenant continued to say that he left the unit in good condition but was unable to have his professional cleaners complete the cleaning as people were still in the house when the cleaners came to the unit. As a result the Tenant said the unit was not cleaned as well as it should have been.

### Analysis

Section 26 of the Act says a Tenant must pay rent when it is due and section 45 of the Act states that a fixed term tenancy ends on the expiry dated of the contract or with written agreement of the Landlord. The Tenant moved out of the rental unit before the expiry date of the tenancy agreement therefore the Tenant does have some responsibility for lost rental income, but both parties agreed the Landlord's son moved into the rental unit on March 1, 2014, therefore the rental unit was occupied. With no evidence of the Landlord trying to rent the unit and the Landlord's testimony that the Landlord's son was living in the rental unit from March 1, 2014 to the present time I find there is no lost rental income to the Landlord as the Landlord was using the rental unit for a family member. I dismiss the Landlord's claim for lost rental income for March and April, 2014 in the amount of \$3,300.00 without leave to reapply.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

With respect to the Landlord's damage claims the Landlord has not provided the condition inspection reports although both parties agree the inspection were completed. Condition inspection reports establish a base line to measure any damage and as the parties signed the reports it shows that both parties agreed or disagreed to the information on the report. The condition inspection reports are essential to proving a damage claim.

As well the Landlord has only provided estimated amounts of the damages and costs to repair the damage. The Landlord has not provided any paid receipts for work done. Consequently the Landlord has not proven a loss exists and the Landlord has not verified the loss with paid receipts. Although the Landlord has not proven a loss or damage exists I accept that both parties agree that condition reports were done. Consequently, I find the Landlord has not proven her claims but should be give an opportunity to do so therefore I dismiss the Landlord's damage claims with leave to reapply.

As the Landlord has been unsuccessful in this matter, I order the Landlord to bear the cost of the \$100.00 filing fee which the Landlord has already paid and to handle the Tenant's security deposit as prescribed in the Act.

Conclusion

The Landlord's application for unpaid rent is dismissed without leave to reapply.

The Landlord's application for damages is dismissed with leave to reapply.

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 24, 2014

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Residential Tenancy Branch

