



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid and/or loss of rent and authorization to retain the security deposit and pet damage deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

I noted the landlord had submitted evidence pertaining to cleaning and damage to the rental unit although the landlord did not make such a claim in filing the Application for Dispute Resolution. Nor, was the Application for Dispute Resolution amended prior to the scheduled hearing pursuant to the Rules of Procedure. At the outset of the hearing, the landlord orally requested the application be amended to include claims for damage and cleaning as indicated in the landlord's Affidavit dated March 30, 2014. The tenant was agreeable to amendment of the application so as to resolve all issues related to this tenancy by way of this proceeding. Therefore, I permitted amendment of the application to reflect the claims included in the landlord's Affidavit.

### Issue(s) to be Decided

1. Is the landlord entitled to recover unpaid and/or loss of rent from the tenant?
2. Has the landlord established an entitlement to compensation for cleaning and damage?
3. Is the landlord authorized to retain any or all of the security deposit or pet damage deposit?

### Background and Evidence

The one-year fixed term tenancy commenced September 27, 2013. The tenant paid a security deposit of \$525.00 and a pet damage deposit of \$525.00. The tenant was required to pay rent of \$1,050.00 on the 27th day of every month. Rent included utilities. The tenant, her child and two dogs occupied the basement suite rental unit. The landlord and her family resided in the unit above.

The parties participated in a move-in and move-out inspection together. The tenant did not agree with the landlord's assessment of the condition of the property at the end of the tenancy. I noted that the tenant signed the condition inspection report in the space provided to authorize the landlord to make deductions from the deposits. Both parties confirmed that this part of the condition inspection report was completed incorrectly during the move-in inspection and that both parties understood that the tenant had not authorized the landlord to retain any part of the deposits at the end of the tenancy.

On December 24, 2013 the tenant put a letter in the landlord's mailbox informing the landlord that the noise level coming from the upper unit was intolerable. On December 27, 2103 the tenant left another letter in the landlord's mailbox notifying the landlord of her intent to vacate the rental unit (the tenant's notice to end tenancy). The landlord received the tenant's notice to end tenancy on December 27, 2013. The tenant paid rent that was due on December 27, 2013 and vacated the rental unit on January 4, 2014. The landlord re-rented the unit effective February 1, 2014 to a single tenant for the monthly rent of \$1,000.00.

### **Unpaid/Loss of rent**

The landlord requested compensation of \$8,400.00 representing the monthly rent for the seven months remaining in the fixed term. As an alternative, the landlord claimed unpaid rent of \$1,050.00 for the period of January 27, 2014 – February 26, 2014 on the basis the tenant gave a deficient notice to end tenancy. Having heard the landlord re-rented the unit effective February 1, 2014 and has not suffered losses of \$8,400.00 or \$1,050.00 as set out above, I dismissed those claims summarily and permitted the landlord to present her other alternative position with respect to loss of rent which was as follows:

January 27 – 31, 2014	\$ 175.00
February – September 2014 rent differential	<u>350.00</u>
Unpaid/Loss of Rent	\$ 525.00

The landlord testified that advertising efforts commenced shortly after receiving the tenant's notice to end tenancy. The landlord advertised the rental unit for \$1,000.00 per month, utilities included. The landlord explained that the rent was reduced to reflect the fact that the rental unit was not as new.

The tenant objected to being responsible for loss of rent, citing the following reasons:

1. The landlord did not made any attempt to re-rent the unit for the same monthly rent of 1,050.00. The tenant questioned the landlord's reasons for advertising the rental unit at a lesser amount since the tenant posted an advertisement for the rental unit, although she did not respond to any of the prospective tenants, for the monthly rent of \$1,050.00 and the tenant received plenty of interest from prospective tenants at that rate.
2. Since the tenant moved out in early January 2014 the landlord could have re-rented the unit prior to February 1, 2014.
3. Since the fixed term tenancy was set t expire on September 26, 2014 the landlord would likely have suffered a loss of a few days if she insisted on commencing a subsequent tenancy on the 1<sup>st</sup> of the month.

### **Cleaning**

The landlord claimed \$529.59 for cleaning the rental unit. The landlord testified that the majority of the cleaning was necessary to eliminate lingering dog odor. The landlord pointed to a "quote/estimate" dated January 14, 2014 in the amount of \$527.59 for six hours of "detail home cleaning", carpet cleaning, pet deodorizing/disinfect, and wall washing/spot cleaning (TSP). The landlord testified that the cleaners performed the work but that she had not yet been invoiced or paid the cleaners since the cleaners bill her quarterly.

I noted that the cleaners made notations on their quote referring to "scuffs & chips marks on walls thought out the suite" and "touch paint suggested or wall cleaning (A MUST)". The landlord responded by stating the cleaning company also performs maintenance work as part of their business.

I also noted that the cleaners expressed an opinion as follows:

"Brand new rental unit in a brand new home (3 months old). In our professional opinion, the rental suite has been abuse in such a short amount of time. Needs major care, cleaning and disinfecting to bring back to a comfortable/reasonable liveable stage."

[reproduced as written]

The tenant questioned whether the landlord incurred a loss of \$527.59 given the landlord has not been invoiced or paid that amount. The tenant suggested the cleaners were personal friends of the landlord. The landlord denied the cleaners are her friends but explained they also clean her own home on a regular basis with quarterly billing.

The tenant submitted that she left the rental unit clean, as demonstrated in her photographs; however, the tenant acknowledged that she did not clean the carpets. In recognition she had pets in the unit the tenant stated she would be willing to pay for carpet cleaning if the landlord incurred such a cost. The landlord affirmed that the carpets were cleaned at the cost reflected in the quote/estimate.

### **Floor edging**

The landlord requested and the tenant agreed to pay \$26.00 for a chipped floor transition piece.

### **Developing photographs**

The landlord requested compensation for developing photographs used for this proceeding. This claim was dismissed summarily as costs associated to filing and participating in a dispute resolution process are not recoverable with the exception of the filing fee.

### **Painting and patching walls**

The landlord submitted that there were chips in the walls that required patching and painting. The landlord requested compensation of \$300.00 for six hours of labour the landlord and her husband spent patching and painting some of the walls in the rental unit. During the hearing, the landlord clarified that the claim represents twelve hours of labour between the two of them at an hourly rate of \$25.00.

The tenant responded by stating 12 hours of labour was excessive and the landlord did not produce evidence to show 12 hours was spent doing this work. The tenant also pointed out that the landlord did not include a receipt for paint supplies, and suggested this is because the landlord's claim is fabricated. The landlord explained that paint did not need to be purchased as the landlord had paint from when the house was constructed. The landlord estimated that one gallon of paint was used.

The tenant also pointed to her written request to the landlord for the paint code so that she could touch up the walls. It was undisputed that the landlord declined to provide the

tenant with the paint code or paint to touch up the walls. The landlord submitted the reasons for denying the tenant's request was two-fold:

1. The landlord did not accept that the tenancy was going to end early and providing the tenant with the paint code would help the tenancy do so.
2. The landlord believed the tenant was going to use paint to cover up scuffs on the walls when the appropriate treatment for scuffs is to use a "magic eraser".

The landlord confirmed that she did not communicate to the tenant that a magic eraser should be used to remove wall scuffs instead of paint. The tenant stated she would have used a magic eraser if that is what the landlord wanted the tenant to use for scuffs. The tenant estimated that only one hour would be required to remove the scuffs. The landlord questioned whether the tenant would have used a magic eraser as the tenant had previously communicated that she did not use chemicals.

The tenant submitted that the landlord's photographs include wall defects from construction of the house for which the tenant is not responsible. The tenant also submitted that the landlord's photographs show damage that is not apparent in photographs taken by the tenant. The landlord denied altering any photographs and suggested the difference is due to the landlord using a good camera that picks up details not visible in the tenant's photographs.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to the landlord's claims, as amended, against the tenant.

### **Unpaid and/or loss of rent**

In reading the written submissions and evidence presented by the parties it would appear as though the tenant sought to end the tenancy early due to breach of a material term by the landlord, as provided under section 45(3) of the Act; however, the tenant did not make such an argument during the hearing and I do not consider that position further. Therefore, I proceed to consider the landlord's entitlement to unpaid and/or loss of rent where a tenant has not ended the tenancy for a landlord's breach of a material term.

Where a tenant ends a fixed term tenancy before the expiry date of the fixed term the tenant may be held responsible for compensating the landlord for loss of rent for the remainder of the fixed term provided the landlord took reasonable steps to minimize the loss of rent.

In this case, I am satisfied the landlord advertised and showed the rental unit to prospective tenants within a reasonable amount of time after receiving the tenant's notice to end tenancy. The landlord also advised the tenant of her ongoing obligation to pay rent under the tenancy agreement.

Although the landlord "could have" re-rented the unit sooner than February 1, 2014, as suggested by the tenant, since the rental unit was vacated by the tenant weeks before that date, the commencement date of a tenancy is not solely up to the landlord. In other words, in order for the landlord to re-rent the unit sooner, the incoming tenant would have to be agreeable to an earlier commencement date. The majority of tenancies commence on the 1<sup>st</sup> day of the month by mutual agreement of the landlord and tenant entering into the tenancy agreement. Therefore, I find insufficient evidence to suggest the landlord acted unreasonably in starting the subsequent tenancy on February 1, 2014.

Nor, am I compelled by the tenant's argument that the landlord would suffer a loss of rent for a few days even if the tenant fulfilled her fixed term tenancy as I find this argument to be merely speculative.

Considering above, I accept that the vacancy and loss of rent that the landlord suffered for the period of January 27, 2014 through January 31, 2014 is recoverable from the tenant under the Act. I calculate the loss of rent for this period of time to be \$169.35 [calculated as \$1,050.00 x 5/31 days] and I award that amount to the landlord.

Based upon the evidence, namely the tenancy agreement entered into with the subsequent tenant, it is undeniable that the landlord is collecting only \$1,000.00 per

month from the current tenant – a reduction of \$50.00 per month. However, I find I am uncertain as to whether the landlord has suffered a loss of \$50.00 per month when I consider the landlord is responsible for paying utilities and the number of occupants decreased from two to one with the subsequent tenancy agreement. I also question the landlord's efforts to mitigate losses since the landlord did not attempt to re-rent the unit for the same amount of rent payable by the tenant and I found the landlord's explanation that the reduction was due to the aging of the unit (less than 4 months) to be unlikely. Therefore, I deny the landlord's claim for the rent differential of \$350.00.

### **Cleaning**

A tenant is required to leave the rental unit "reasonably clean" at the end of the tenancy. It is important to note that this requirement is not the same as higher standards of cleanliness such as "perfectly clean" or "impeccably clean". The parties were in dispute as to whether the tenant met her burden to leave the unit reasonably clean. Since the tenant did not agree with the landlord's assessment of the property as reflected on the move-out inspection report I find the document offers little evidence as to the actual condition of the unit at the end of the tenancy. Therefore, in determining the state of cleanliness at the end of the tenancy I have largely relied upon the parties' respective verbal and written submissions and photographs provided by both parties.

Although I have not completely disregarded the cleaning quote/estimate, I have relied upon it less so as I find it unlikely the landlord would not have been invoiced for cleaning services allegedly done in January 2014 by the date of the hearing especially considering the sizable amount indicated on the quote.

Upon review of the photographs, I find very little evidence to show the tenant left the unit with visible dirt, dust, grime or dog hair. Further, the cleaner's quote indicates a "detail home cleaning" was required; however, I find this terminology suggests a level of cleaning that is beyond that required of the tenant under the Act and the estimated six hours needed to perform this cleaning does not correspond to the photographs presented to me. Rather, I find the photographs demonstrate a rental unit that appears to be at least "reasonably clean".

The landlord also submitted that cleaning of the carpets was required to remove dog odor and I accept the landlord's argument that odor is not reflected in photographs. I also accept that having two dogs in the rental unit is likely to result in dog odor clinging to soft surfaces such as carpeting. Residential Tenancy Policy Guideline 1 provides that where a tenant has uncaged animals in the unit the tenant will be generally held responsible for carpet cleaning, regardless of the length of the tenancy. Considering the carpeted area in the rental unit consisted of one bedroom, I find the amount of

\$179.99 plus tax, as reflected on the cleaning quote/estimate, sufficient to clean and deodorize carpeting of that size.

I make no award for the “pet deodorizing/disinfect” reflected on the quote/estimate as I find it is unclear as to whether this part of the quote related to the carpeting or the walls. As I indicate above, I find a charge of \$179.99 sufficient to clean and deodorize carpeting in one bedroom. If the deodorizing related to the walls, the landlord had submitted that there was dog hair on the walls which was not apparent in the photographs provided to me.

I make no award for wall washing that related to removal of scuffs on the walls as I find the landlord did not mitigate losses associated with scuffs for reasons provided in the “painting and patching” section of this analysis.

In light of the above, the landlord is awarded \$188.89 for carpet cleaning and deodorizing.

### **Floor edging**

As the tenant was agreeable to compensating the landlord for this item, I award the landlord \$26.00 as claimed.

### **Painting and patching**

Upon review of the photographs, I accept that there were some chips in the walls and several scuff marks. However, I find the landlord’s request for compensation for 12 hours of labour to paint and patch the chips to be excessive in comparison to the images depicted in the photographs. I also find the landlord’s photographic evidence somewhat unreliable in establishing damage for which the tenant is responsible since it is apparent some of the photographs provided by the landlord depict a builder’s defect in finishing the wall properly. Finally, I find the landlord’s refusal to provide the tenant with paint or paint codes as requested by the tenant, or a suggestion to the tenant that she use a magic eraser for scuffs instead of paint, to be a failure on the part of the landlord to take reasonable steps to mitigate the landlord’s losses. Although the tenant avoided using chemicals during her tenancy, when the unit was occupied by her child, pets, and contained her possessions, the landlord’s assumption that the tenant would not use a magic eraser after vacating the unit was speculative on part of the landlord.

For all of the above reasons, I deny the landlord’s request for compensation for wall painting and patching.



### **Monetary Order and deposits**

Given the amount the landlord was seeking against the tenant in comparison with the awards provided to the landlord with this decision, I make no award for recovery of the filing fee.

In total, the landlord has been awarded compensation totalling \$384.24 [calculated as \$169.35 + \$188.89 + \$26.00]. Since the landlord is holding deposits totalling \$1,050.00 I order the landlord to return the remainder of the deposits in the amount of \$665.76 to the tenant without further delay.

In keeping with Residential Tenancy Policy Guideline 17: *Security Deposits and Set-Off*, I provide the tenant with a Monetary Order in the amount of \$665.76 to ensure the landlord returns the balance of the deposits as ordered.

### Conclusion

The landlord has been awarded compensation of \$384.24. The landlord has been ordered to return the balance of the tenant's deposits in the amount of \$665.76 without further delay. The tenant has been provided a Monetary Order to ensure payment is made.

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 14, 2014

---

Residential Tenancy Branch

