



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR MND MNDC FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Sections 45 and 67 for rental loss and damages; and
- d) An order to recover the filing fee pursuant to Section 72.

### **SERVICE:**

Both parties attended and the tenant agreed she received the Application for Dispute Resolution by registered mail. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that the tenant had a fixed term lease which she broke causing him rental loss and that she also did damages to the property, that they were beyond reasonable wear and tear and the cost to cure the damage? Is the landlord entitled to recover the filing fee?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is the tenancy commenced on June 1, 2013 on a one year fixed term lease in a new suite just finished by the landlord, a security deposit of \$400 was paid and rent was \$800 a month. It is undisputed that the tenant vacated the property on September 30, 2013 after giving a one month notice to end her tenancy and the landlord re-rented the unit as of October 1, 2013. The tenant obtained a refund of double her security deposit at a hearing on March 5, 2014 and the landlord disputed some of the evidence given by the tenant in that hearing; however, I advised him that I could not reopen another arbitrator's hearing and decision and that the route would have been to apply for a review hearing at the time. He said he did not

attend that hearing because he did not pick up the registered mail as he did not think it was important.

He claims in this hearing:

- i) \$7200 for nine months rent
- ii) \$175 for 5 hours labour for repainting the suite and fixing the bathroom tap.
- iii) \$87 towards buying a new door for the suite as it has been scratched and dented by the tenant.
- iv) \$105 for the filing fee
- v) \$1358.35 for lost overtime hours (35 hours) to prepare and show the suite to new tenants.
- vi) \$200 of her \$400 security deposit for breaking the lease.

The parties confirmed there was no condition inspection report done at move in or move out but the tenant said the landlord did point out the door damage to her. She said the bathroom tap had never worked properly and the landlord said it had been installed by a licensed plumber but due to her use, it did not turn properly after and it took him 4 hours to fix it. The tenant said she had put holes in the walls to hang pictures but agreed that the holes were bigger than some as her friend put in safety anchors first. She said they tried to putty them when she left.

In evidence is a copy of the lease, hand written notes from the landlord, photographs and some pay statements. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

Monetary Order:

The onus of proof is on the landlord to prove that he suffered rental loss from breach of the fixed term lease and that the tenant did damage to the property, that it was beyond reasonable wear and tear and the amount it cost to cure this damage. I find the landlord's evidence credible and prefer it to the evidence of the tenant that damage was done to the walls, a door and a bathroom tap. I find the landlord's evidence is supported by the tenant's statement that she had put hanging devices on the walls that needed larger holes and by the landlord's photograph of the door showing the damage. The tenant did not dispute that it had been a brand new suite and I find it unlikely that the door was damaged before the tenancy or that the tap malfunctioned. Therefore, I find the landlord entitled to recover \$175 + \$87 for his labour and partial cost of a new door. I find it credible that there are no third party invoices as the landlord had to do the labour himself for financial reasons.

In respect to his claim for rental losses, I find he did not suffer any rental loss as his evidence is that a new tenant moved in immediately when this tenant vacated. Therefore, I find him not entitled to recover any rental loss.

Regarding his claim for loss of overtime hours to show the suite and a further \$200 for breaking the lease, I find insufficient evidence to support that the landlord lost overtime hours due to showing the suite. There is insufficient evidence that overtime was offered to him and which appointments he had to keep during those offered hours to show the suite and mitigate his rental loss. Therefore I dismiss this portion of his claim.

The landlord not have an administrative clause and a cost for re-renting in the lease but I find the tenant did break the one year lease after three months and this cost the landlord time and money to re-rent. Therefore, I find him entitled to a nominal amount of \$200 towards his administrative costs for re-renting.

**Conclusion:**

I find the landlord is entitled to a monetary order as calculated below and to recover \$50 towards his filing fees paid for this application. Although he paid \$100 for the filing fee, I award only half of it as I find the extra cost was because he claimed rental loss in excess of \$5000 when, in fact, he had suffered no rental loss. As the tenant has a monetary order for \$850 from the previous hearing, File #814457, I advise the parties to set off these amounts with the landlord owing the balance.

**Calculation of Monetary Award:**

Labour to cure damage 175 + 87	262.00
Administrative cost awarded	200.00
Filing fee awarded	50.00
Total Monetary Order to Landlord	512.00

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: July 14, 2014

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Residential Tenancy Branch

