



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent, for damage to the unit, and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; to keep all or part of the security deposit; and to recover the RTB filing fee.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for damage to the unit?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

### Background and Evidence

The tenancy agreement signed by the parties on August 25, 2011 indicates the tenancy started on October 1, 2011 and the tenants were obligated to pay rent of \$1,120.00 monthly in advance on the first day of the month. The tenant gave evidence that they also paid a security deposit of \$560.00.

The parties agree the tenancy ended on February 28, 2014. The landlord's evidence is that the tenants gave late notice on February 5, 2014. The landlord says they posted notice of the vacancy on their own website and on Craigslist on February 5<sup>th</sup> but did not find new tenants until April 1, 2014. The landlord says there were showings during the month of February. She does not know why it took so long to rent the rental unit, since it is in a new building and has a washer/dryer. The landlord seeks compensation for

lost rental income of \$1,120.00 for the month of March 2014 as well as a \$25.00 late fee and a \$25.00 NSF fee.

The tenant says he attempted to call the landlord on February 1, 2014 to give notice, however there was no answer. After that, the landlord told him she was busy. His evidence is that he was finally able to speak with the landlord on February 5, 2014 and gave notice then for February 28, 2014.

The tenant says he also went by the office on three occasions but there was no one there. He says that in hindsight he could have left the notice under the door. Later in the hearing, the tenant says it was probably January 30<sup>th</sup> when he first tried to give notice. The tenant also gave evidence that their rent was \$1,120.00 per month plus \$50.00 for parking, and not \$1,170.00 per month.

The landlord gave evidence that they showed the rental unit five times during February but the rental unit was very crowded with the tenants' possessions. She also says the tenants told the landlord around February 19 or 20 that they did not want any more prospective tenants viewing the rental unit. The landlord also gave evidence that the tenants have the landlord's email address and could have given notice earlier by email.

The tenant disputes that he told the landlord not bring any more prospective tenants to view the rental unit. The tenant also disputes that he had the landlord's email address.

The landlord also seeks compensation of \$72.00 for four hours of cleaning. The landlord says they had to clean the windows, the kitchen, the toilet, and the balcony. A receipt was put into evidence, however the landlord did not provide any photographs to confirm that cleaning was required. The landlord's cleaner gave evidence that it was necessary for her to clean the windows, balcony, to move the stove and clean behind it, and to clean the toilet.

The tenant says he did a move-out inspection with the landlord on March 3<sup>rd</sup> but they disagreed about whether the rental unit required further cleaning. The tenant says they cleaned the washroom, toilet, kitchen, and windows. The tenant says the balcony was also clean.

The landlord also claims \$262.50 for repainting the ceiling and walls. The landlord says the walls were freshly painted a light beige at the start of the tenancy. There were scratches in the paint and you could see white primer showing through underneath. Some of the scratches were deep so they applied a second coat, but they are not claiming the cost of the second coat from the tenants. The ceiling had to be painted

because there were black marks. A receipt was put into evidence, however the landlord did not provide any photographs to confirm that painting was required.

The tenant says they were told at move-in that if there were any holes in the walls they would be charged \$50.00. He says there were 18 small nail holes at the end of tenancy and he filled them in and sanded them. The white filler showed but the areas could have been touched up with the light beige paint. He says it was unnecessary to paint the entire place. The tenant says there was one deep scratch behind a bedroom door which he filled. He disputes that there were any black marks on the ceiling.

The landlord disputes that the tenant was told there would be a \$50.00 charge for nail holes. She agrees the tenant tried to repair the walls, but says the work was not professional.

### Analysis

Section 45(1) states:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenants gave notice on February 5, 2014 which was too late to comply with Section 45(1) for a February 28, 2014 move-out. Where a notice specifies an effective date (or move out date) that is earlier than the earliest date that complies with the Act, then the effective date is deemed by Section 53(2) to be the earliest date that does comply with the Act. In this case, the earliest effective day that complies with the Act is March 31, 2014. Therefore, I find that the effective date of the tenants' notice was March 31, 2014. Accordingly, the tenants are responsible to pay rent for the month of March 2014.

Further, I find the landlords took appropriate steps to mitigate their losses by advertising the rental unit promptly and by showing the rental unit to new prospective tenants during the month of February 2014. For those reasons, I find the landlords are entitled to be compensated for rental losses for the month of March 2014. I agree with the tenant that those losses must be limited to the rent amount of \$1,120.00 and do not include

parking. The landlord did not provide evidence that the tenants paid rent late or had an NSF cheque, so the claims for a \$25.00 late fee and a \$25.00 NSF fee are dismissed.

According to Section 37(2), when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. In this case, the parties differ in their evidence about whether the rental unit was “reasonably clean” at move out. It is the landlord’s burden of proof to show that the landlord had to incur cleaning costs. Although the landlord’s cleaner gave evidence, I did not give her evidence the weight I would give to the evidence of a disinterested third party. Since the landlord did not provide photographs to indicate that the rental unit was less than reasonably clean, I find the landlord has not proven on a balance of probabilities that additional cleaning costs were necessary.

Similarly, I find the landlord has not proven that it was necessary to incur painting costs. The tenant gave evidence that it would have been possible to touch up the paint where he filled in holes. The landlord did not provide photographic evidence to demonstrate that it was necessary to paint the walls and ceiling.

Since the landlord has been somewhat successful in their claim, the landlord is entitled to recover their RTB filing fee of \$50.00. The total amount due the landlord is therefore \$1,170.00, comprised of \$1,120.00 rent and \$50.00 filing fee. I order that the landlord retain the security deposit of \$560.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$610.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### Conclusion

I grant the landlord a monetary order of \$610.00. The landlord may also retain the security deposit.

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 21, 2014

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Residential Tenancy Branch

