



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with an application by the landlords for a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

The landlords attended the teleconference hearing and gave evidence, however the tenants did not attend. The landlords gave evidence that they served the tenants with the Notice of a Dispute Resolution Hearing and Landlord's Application for Dispute Resolution by registered mail on March 4, 2014. I find the tenants were properly served.

### Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords 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 July 8, 2013 indicates the tenancy started August 1, 2013 and was for a one-year fixed term ending July 30, 2014. Under "Rent", the amount of \$1,600.00 is typed on the form, payable monthly in advance on the first day of the month. The amount \$1,600.00 is crossed out and \$2,000.00 is handwritten in with the words "as of Oct/2013"; "Oct" is then crossed out and "Nov" written. There is a box apparently containing the initials of three people beside the handwritten notations. Under "What is included in the rent", there is a marked handwritten box with the notation "suite usage" written beside it.

The tenancy agreement indicates the tenants paid a security deposit of \$800.00. The landlords gave evidence that the rental property is half of a duplex and it previously had a basement suite. Prior to the tenancy, the landlords "decommissioned" the basement suite because the municipality advised them that a secondary suite was not

permitted in a duplex. Accordingly, the landlords disconnected the stove, cooking surface, and hood fan in the basement.

The landlords' evidence is that they told the tenants prior to the start of the tenancy that the basement suite could not be rented out separately. The tenants initially rented only the upstairs of the house for \$1,600.00.

The landlords' evidence is that the tenants approached them about using the basement of the rental property for their daughter. Accordingly, the parties amended the tenancy agreement to allow the tenants to use the entire half duplex, including the basement, at a rental amount of \$2,000.00 per month effective November 1, 2013.

In late December 2013, a municipal by-law officer visited the rental property and discovered that the basement suite was being rented out separately. The landlords' evidence is that the tenants had reconnected the appliances and rented the basement suite to a third party.

The landlords gave evidence that they visited the rental property in early January 2014 and spoke to the basement suite tenant. She told the landlords that she had been living in the basement suite since August 2013 and paid the tenants \$750.00 per month.

The landlords gave evidence that the tenants did not pay rent for January 2014. The tenants told them around January 6<sup>th</sup> that they intended to move out and vacated the rental property in mid-January. The basement suite tenant moved out at the end of January 2014.

The landlords had been renting another home and could not leave that property until February 28, 2014 since they had to give one month's notice. They did so, and moved back into the former rental property on March 1, 2014.

The landlords claim unpaid rent for January 2014 of \$2,000.00 and a rental loss of \$2,000.00 for the month of February 2014. The landlords also claim unpaid utilities in the amount of \$300.00. Their evidence is that the tenants were responsible to pay for heating oil. The fuel company measured the oil in the oil tank at the beginning and end of the tenancy and found the tenants had used approximately \$800.00 worth of oil. The landlords' evidence is that they received \$500.00 from the tenants for oil, leaving a balance owing of \$300.00. The tenancy agreement confirms that heat was not included in the rent.

The landlords claim the tenants owe them \$750.00 for each of the months of August, September, and October. These are the amounts the tenants were paid by the basement suite tenant. The landlords also claim the tenants owe them \$350.00 for each of the months of November, December, and January. These are the amounts the basement suite tenant paid the tenants, less the difference in rent the tenants paid the landlord for the use of the basement. The landlords claim these amounts on the basis that the tenants were benefiting from something they were not permitted to do.

The landlords also claim the following amounts for cleaning and damage:

Carpet Cleaning	250.90	Receipt provided
Door replacement	75.00	Estimate to cut a replacement door to fit nonstandard opening under stairs.
General cleaning	100.00	5 hours work @ \$20.00 per hour for stove, fridge, and general cleaning
Painting – materials	143.21	Tenants were allowed to change paint colour if they restored it to original colour. Tenants did not restore living room to original colour. Receipts provided 56.78 + 86.43
Painting – labour	250.00	Approx. 7 hours work by landlords.
Locksmith	116.72	Locksmith (tenants did not return keys)
Electrician	400.00	Estimate for permit and work to decommission suite again; based on the cost incurred the first time this was done.
Total:	\$ 1,335.83	

### Analysis

I accept the landlords' evidence that the tenants did not pay rent for the month of January 2014 and moved out without adequate notice partway through the month. I find the landlords are entitled to an order for unpaid rent of \$2,000.00 for the month of January 2014.

When the tenants moved out, the landlords decided to give up their own rental accommodation and move into the rental property. However, they had to pay an additional month's rent at their rental accommodation because the short notice they received from the tenants meant they could not give a month's notice at their rental accommodation until the end of January 2014. As a result, the landlords incurred a loss of the amount they needlessly paid in rent for the month of February 2014. The amount of the landlords' February 2014 rent was not in evidence. I set their compensation at \$2,000.00, based on the apparent market rent of the home they moved into on March 1, 2014.

I accept the landlords' evidence that the tenants were required to pay for heating oil, and failed to pay an amount of \$300.00. The landlords are entitled to recover that amount.

I find the landlords are not entitled to compensation for the amounts the tenants collected from the basement suite tenant, since there was no loss to the landlords as a result of the unapproved basement suite rental.

I accept the landlords' evidence that they have incurred or will shortly incur the losses or expenses set out above for cleaning and repair of the rental unit. I find the landlords are entitled to the compensation claimed of \$1,335.83. The landlords are also entitled to recover their filing fee of \$100.00.

The total amount due the landlords is \$5,735.83. I order that the landlords retain the security deposit of \$800.00 in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of \$4,935.83. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### Conclusion

I grant the landlords a monetary order for \$4,935.83.

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 16, 2014

