



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for: damage to the rental unit; unpaid rent or utilities; to keep all of the Tenant’s security deposit; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and to recover the filing fee.

The Landlord and both Tenants appeared for the hearing; however, only the male Tenant and the Landlord provided affirmed testimony during the hearing and only the Landlord provided written evidence prior to the hearing.

The Landlord testified that he had served each of the Tenants with a copy of his Application and his written evidence by registered mail to the Tenant’s rental unit address on March 13, 2014. The Landlord testified that he amended his monetary claim to \$3,193.41 on March 31, 2014, a copy of which he served to each Tenant by registered mail on April 1, 2014. However, both Applications within the file show a monetary claim amount of \$3,193.41 and it appears that no change or amendment was made by the Landlord; the Landlord was confused in relation to this amendment.

The Tenant confirmed receipt of the Landlord’s initial Application claiming a monetary amount of \$3,193.41 and the Landlord’s written evidence which he claimed did not make sense. However, the Tenant stated that he had received the paperwork from his neighbor two weeks after the Landlord claimed he had served them.

In fact, the Canada Post website shows that a notice was left for the Tenants to pick up the documents at the post office, after which the female Tenant collected and signed for the Landlord’s initial Application five days later after being sent by the Landlord; this contradicted to the Tenant’s testimony.

As I was satisfied that the Tenants were served with the Landlord's initial Application for a monetary claim of \$3,193.41 in accordance with Section 89(1) (c) of the Act, I continued to hear the parties evidence in relation to the Landlord's Application for this amount as follows.

### Preliminary Issues

At the start of the hearing the Landlord was asked to explain his monetary claim. The Landlord provided conflicting dates and times around the payments that had been made, when notices to end tenancy had been issued to the Tenants and when rent had been paid.

After considerable discussion between the Landlord and Tenant, it became evident that the Landlord was claiming in this hearing for outstanding rent for March and April, 2014 in the amount of \$1,500.00, damages to the rental unit in the amount of \$170.00 and for late rent fees.

The Landlord had also made a monetary claim for registered mail costs related to multiple documents which had been sent to the Tenants for previous hearings including notices to end tenancy and evidence served since December 31, 2013. However, I explained to the Landlord during the hearing that these are costs which I am not able to award a party under the Act and that each party is responsible for bearing their own costs for Dispute Resolution Proceedings.

The parties also agreed that the Landlord's claim for unpaid rent prior to March 1, 2014 had also been dealt with in previous hearings and these matters were being progressed through the Small Claims court for enforcement. I explained to the Landlord that when a Monetary Order is issued and the respondent subsequently fails to make payment through the enforcement process of the Small Claims court, an Applicant cannot apply again for an amount that has already been dealt with and ordered under the Act.

The Landlord also sought to recover Small Claims court filing fees resulting from a garnishee order issued by the court. However, the Landlord was informed that costs arising from enforcing a Monetary Order should be taken up with the Small Claims court and not the Residential Tenancy Branch.

The Landlord also sought to recovery filing fee amounts for previous hearings the Landlord had initiated through the Direct Request Process for which a Landlord is unable to claim at the time of making this type of Application. However, the Landlord is still precluded from claiming for a filing fee for previous hearings.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent for March and April, 2014?
- Is the Landlord entitled to late fees for unpaid rent?
- Is the Landlord entitled to costs associated with damage to the rental suite?
- Is the Landlord entitled to keep all of the security deposit in partial satisfaction of his claim?

Background and Evidence

Both parties agreed that this tenancy started on April 15, 2013 for a fixed term that was due to expire on April 30, 2014. Rent was payable under the written tenancy agreement in the amount of \$750.00 on the first day of each month.

The Tenant and Landlord disagreed on the exact time the security deposit was paid but both parties agreed that \$375.00 was paid near the beginning of the tenancy which the Landlord still retains.

The Landlord provided a copy of the move in condition inspection report which was completed by both parties on April 15, 2013 and a copy of the move out condition inspection report which was completed by the Landlord on March 10, 2014 in the absence of the Tenants.

The Landlord testified that on March 10, 2014, it came to his attention that the Tenants had abandoned the rental unit without giving any prior written notice or a forwarding address. The Landlord testified that he had been told by the Tenants in the middle of February, 2014 that they were going to vacate the rental suite at the end of the February month but that he had requested written notice from them which they failed to provide.

The Tenant testified that they had told the Landlord that they would be vacating the rental suite as per the effective date on the notice to end tenancy for unpaid rent (February 26, 2014), which had been served to them in February, 2014. The Tenant testified that they did not move out until March 2, 2014 based on a 'gentleman's agreement' they had with the Landlord to vacate on this date.

However, the Landlord denied such an agreement and as a result claims for lost rent for March, 2014. In addition, the Landlord testified that he advertised the rental unit for re rental but has still not been able to rent it and therefore claims loss of rent for April,

2014 being the last month of the fixed term tenancy agreement. However, the Landlord provided no evidence in relation to the advertising of the rental suite.

The Landlord then testified that after the Tenants had abandoned the rental unit, they had left a 1.5 x 1.5 x 1 inch deep hole in the hallway wall, also recorded on the move out condition inspection report, which he had to fill in, sand down and paint over.

The Landlord also claims \$120.00 for the cost of hauling a mattress and a television to the landfill which had been left behind by the Tenants.

The Tenant testified that the hole left in the wall was tiny and not as big as what the Landlord claims. The Tenant admitted to leaving behind a bed mattress and television but disputes the Landlord's exaggerated claim of \$120.00 for hauling these items as the Landlord has his own trailer and resides two blocks from the landfill site.

The Landlord also seeks late rent fees for unpaid rent for the months of December, 2013 and January – March, 2014 as per a clause in the written tenancy agreement which requires Tenants to pay a late rent fee of \$25.00.

### Analysis

In relation to the Landlord's claim for unpaid rent for March, 2014, I find that as the Tenants did not leave the rental unit until March 2, 2014 and failed to provide adequate written notice to the Landlord prior to them vacating the rental suite, it would not have been possible for the Landlord to re-rent out the rental unit for March, 2014.

Furthermore, a Landlord who ends a fixed term tenancy with a notice to end tenancy is still able to claim for loss of rent. As a result, I find that the Tenants are liable for the Landlord's loss of rent for March, 2014 in the amount of **\$750.00**.

Section 7(1) (d) of the Residential Tenancy Regulation allows a Landlord to charge an administration fee up to \$25.00 for late payment of rent if the tenancy agreement provides for this fee. The Landlord provided a copy of the tenancy agreement which provides for this fee and as the Tenants failed to pay any rent for March 2014, I find that the Landlord is entitled to this **\$25.00** late rent fee.

In relation to the Landlord's claim for late fees associated with the previous months claimed, I find that the Landlord has not provided sufficient evidence in the form of notices to end tenancy and previous decisions relating to claims for unpaid rent for this tenancy that would suggest a late fee was warranted. Furthermore, the Landlord provided conflicting and unclear evidence around when payments were made and to

what months they related to. As a result, I dismiss the Landlord's Application for the resulting late rent fees claimed.

In relation to the Landlord's claim for April, 2014 rent, I rely upon Section 7(2) of the Act and Policy Guidelines 3 and 5 to the Act, which explain that a Landlord is required to mitigate loss when making a claim for loss or damage under the Act. In this case, the Landlord relies on his verbal testimony that he advertised the rental unit for re rental after the Tenants had left. However, the Landlord has provided no supporting or corroborating evidence of these advertisements and when they were placed, renewed and how many enquires were generated that would have resulted in the re rental of the unit. Therefore, I dismiss the Landlord's claim for loss of rent for April, 2014.

Section 37(2) of the Act requires a Tenant to leave a rental suite reasonably clean and undamaged at the end of the tenancy. In addition, Section 21 of the Residential Tenancy Regulation states that a condition inspection report can be used as evidence of the state of repair and condition of the rental suite, unless a party has a preponderance of evidence to the contrary.

In analysing the Landlord's claim for damages, I find that the Tenant's claim that the hole in the hallway wall was tiny contrary to what was described by the Landlord and on the move out condition inspection report is unsubstantiated. The Tenants failed to attend a condition inspection to record the state of repair at the end of the tenancy. Therefore, I have considered the comments reflected on the move out condition inspection report along with the Landlord's testimony as conclusive evidence that the Tenants caused damage to the hallway wall.

However, the Landlord has failed to provide written evidence in relation to the \$50.00 costs being claimed for the repair. As I am satisfied that the Tenant's caused this damage, I award the Landlord 50% of the costs claimed in the amount of **\$25.00** for the repair of the wall.

The Tenants did not dispute the fact that they had left two large pieces of furniture behind which would have required the Landlord to incur cost for their removal and disposal. As the Landlord failed to provide sufficient evidence to verify the amount being claimed through documentary evidence, I am only prepared to award the Landlord **\$40.00** for the cost of disposing of these two items which the Tenants had left behind.

As the Landlord has been partially successful in this matter, the Landlord is also entitled to recover from the Tenants the **\$50.00** filing fee for the cost of this Application. Therefore, the total amount awarded to the Landlord is **\$890.00**.

As the Landlord already holds \$375.00 in the Tenants' deposits, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded \$515.00.

### Conclusion

For the reasons set out above, I grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$515.00**. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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 2, 2014

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Residential Tenancy Branch

