



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The tenant confirmed receipt of all the landlord's evidence submissions and there were no disputes in relation to review of the evidence submissions.

The tenant confirmed they did not submit any documentary evidence.

### Preliminary matters

On April 29, 2014, the landlord filed their application for dispute resolution. On June 23, 2014, the tenants filed a letter requesting an adjournment which the letter was dated June 19, 2014. I read the adjournment request prior to the commencement of the hearing.

In the letter, the tenants are seeking an adjournment as they claim their witnesses are not available. However, there is no evidence to support their unavailability. As an example the tenant writes,

“ZW – 17 yrs old Summer UNIVERSITY EXAMS in the United States”

[Reproduced as written]

However, the letter does not say what dates or times these exams are scheduled to commence and there is no documentary evidence, such as a letter from the university, to support that these exams are scheduled at the same time as the telephone

conference hearing. I note ZW, is not a witness, ZW is tenant and his testimony could have been submitted by affidavit evidence with reasonable planning.

Further, the tenants have not provided any documentary evidence supporting that the balance of their witnesses were unable to attend the hearing due to pre-planned holidays. There were no itineraries, plane tickets or any documentary evidence to support the tenants' application for adjournment.

There was no submission from the tenants on why these witnesses could not attend the hearing as it was by telephone or with reasonable planning these witnesses could have provided their testimony by affidavit evidence.

Further, I have read what the tenant alleged the witnesses would have provided as evidence and none of their testimony related to the issue of unpaid rent for December 2013, January 2014 and February 28, 2014.

As a result, I denied the tenants' application for an adjournment as the tenants had sufficient notice of the dispute resolution proceeding and it would be unfair and prejudicial to the landlord to delay the hearing process any further.

Therefore, the hearing proceeded.

### Cautions

The tenant became difficult once I denied their application for an adjournment. The tenant was interrupting the process and her phone line was placed on mute for a short period of time after being cautioned while I asked the landlord some preliminary questions about the tenancy, such as when the tenancy started, how much rent was paid.

When I asked the tenant if she agreed or disagreed with the answers the landlord provided the tenant became argumentative. The tenant stated that she had sent a text message to her lawyer and that her lawyer sent her a response not to participate in the hearing. The tenant was told that her lawyer could join the telephone conference as it appeared her lawyer was available to assist the tenant.

The tenant stated she was recording the telephone conference hearing, I cautioned the tenant that it was contrary to the Rules of Procedures and any recording made is without my permission.

**I order the tenant** to delete the recording as it is made without my consent. The tenant is cautioned that failing to comply with my order could result in an administrative penalty under section 95(3) of the Act and is liable to a fine of not more than **\$5,000.00**.

The tenant was further cautioned, if she left the hearing, it was at her own choice and the hearing would continue in her absence. The tenant exited the hearing.

As the tenant exited the hearing by her own choice, I note that this would not constitute that the tenants were unable to attend the hearing for any future application for review consideration.

### Issues to be Decided

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

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on September 1, 2013. Rent in the amount of \$2,200.00 was payable on the first day of each month. A security deposit of \$1,100.00 and a pet damage deposit of \$500.00 were paid by the tenants. The tenancy ended on February 28, 2014.

The landlord testified that the tenants failed to pay rent for November 2013, and on December 13, 2013, he received an order of possession and a monetary order for unpaid rent for November 2013.

The landlord stated that the tenants filed for a review consideration which was granted and the original decision and orders were suspended. The new hearing was held on February 19, 2014, and the arbitrator heard evidence from both parties and the original decision and orders were confirmed.

The landlord claims as follows:

a.	Unpaid rent for December 2013 to February 2014	\$6,400.00
b.	Loss of rent for March 2014	\$2,200.00
c.	House cleaning costs	\$ 389.55
d.	Removal and disposal of furniture	\$ 300.00
e.	Bulbs and window repair	\$ 100.00
f.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$9,589.55</b>

### Unpaid rent for December 2013 to February 2014

The landlord testified that he received a money order from the tenants to pay the outstanding monetary order that was for rent owed for November 2013. The landlord

stated the money order also provided \$200.00 towards the outstanding rent for December 2013. The landlord stated he received no further rent from the tenants.

The landlord stated the tenants have failed to pay rent as follows:

- \$2,000.00 for December 2013,
- \$2,200.00 for January 2014, and
- \$2,200.00 for February 2014.

The landlord stated that the tenants have a pattern of failing to pay rent. The landlord has submits copies of previous orders, with previous landlord's as evidence to support his position,

- Order made on February 12, 2013, unpaid rent in the amount of \$7,300.00 ( for unpaid rent for October 2012 to March 2013)
- Order made June 21, 2013, unpaid rent in the amount of \$9,600.00; (for unpaid rent from March 2013 to June 2013)

#### Loss of rent for March 2014

The landlord testified that after the review hearing of February 19, 2014 was completed and the arbitrator made a decision, which upheld the original order possession, he was not able to re-rent the premises for March 1, 2014, due to short notice and that he was unsure if the tenants would vacate the premises. The landlord seeks to recover loss of rent for March 2014. Filed in evidence is a copy of the decision date February 19, 2014, which supports the landlord's position.

#### House cleaning costs

The landlord testified that when the tenants vacated the rental premises that they failed to remove all the garbage and failed to clean the premises. The landlord stated he had to hire a cleaning company and they had to clean all the appliances, the bathroom, sweep and wash the floors. The landlord stated that the room the dog was contained in needed extra cleaning. Filed in evidence are photographs which support garbage was left behind, and the rental unit appears to be dirty. Filed in evidence is a receipt for cleaning.

#### Removal and disposal of furniture

The landlord testified that the tenants left behind pieces of furniture and that he had to have the items removed from the rental premises. The landlord stated that he also has to pay to have the items disposed of. The landlord seeks to recover the removal and estimate disposal costs of \$300.00. Filed in evidence are photographs of furniture items left behind.

### Bulbs and window repair

The landlord testified that the tenants caused damage to a window by breaking the handle on the window frame. The landlord stated that he has not had the window repaired but when he went to the local hardware store, the estimated cost was \$100.00. The landlord confirmed a move-in condition inspection report was not conducted.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### Unpaid rent for December 2013 to February 2014

Section 26 of the Residential Tenancy Act states:

*26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy*

*agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I accept the undisputed evidence of the landlord that the tenants did not pay all rent owed for December 2013 and did not pay any rent for January and February 2014. I find the tenants have breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$6,400.00**.

#### Loss of rent for March 2014

As a result of the tenants not complying with the terms of the tenancy agreement or the Act the landlord suffered a loss of rent for March 2014; the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenants had not breached the tenancy agreement or Act. I find the landlord is entitled to recover loss of rent for March 2014, in the amount of **\$2,200.00**.

#### House cleaning costs

Under section 37 of the Act, the tenants are required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage.

I accept the undisputed testimony of the landlord that the tenants did not leave the rental unit reasonably clean as the photographs show the rental unit was left dirty. I find the tenants breached the Act, when they failed to clean the rental unit at the end of the tenancy. I find the cost the landlord paid for cleaning reasonable and supported by a receipt. Therefore, I find the landlord is entitled to recover the cost of cleaning in the amount of **\$389.55**.

#### Removal and disposal of furniture

I accept the undisputed testimony of the landlord that the tenants left furniture items in the rental unit, which had to be removed from the rental premises. This is supported by photographs. I also accept that those items will be required to be disposed of. I find the tenants breached the Act when they failed to remove all of their belongings from the rental premises. While the landlord has not provided an estimate of the actual cost of disposal, I find the landlord is entitled to a nominal amount for removal of the items and for the future disposal cost in the amount of **\$50.00**.

#### Bulbs and window repair

In this case, the landlord seeks the cost to repair the window frame and bulbs. However, I find the landlord has failed to provide sufficient evidence to support this portion of their claim as there was no move-in condition inspection report to show the

condition of the window at the start of the tenancy. Further, I heard no evidence of the bulbs. Therefore, I dismiss this portion of the claim due to insufficient evidence.

I find that the landlord has established a total monetary claim of **\$9,139.55** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,100.00** and pet damage deposit of **\$500.00** in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$7,539.55**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord(s) are/is granted a formal order for the balance due.

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

