



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – MNDC, MNSD, FF

For the landlords – MNR, MNSD, FF, SS

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and Order to recover the security deposit and to recover the filing fee from the landlords for the cost of this application. The landlords applied for a Monetary Order for unpaid rent; for an Order permitting the landlords to keep all or part of the tenant's security deposit; an Order for substitute service; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the parties were permitted to provide additional evidence after the hearing had concluded. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

At the outset of the hearing the landlords' advised that as they managed to serve the tenant with the hearing documents they no longer require an Order for substitute service and withdrew this section of their claim.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to recover the security deposit?
- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords permitted to keep the security deposit?

Background and Evidence

The parties agreed that this tenancy was due to start on April 01, 2014 for a fixed term of three months. Rent was \$2,000.00 per month due on the 1<sup>st</sup> day of each month. The tenant paid \$1,000.00 as a security deposit on March 22, 2014.

The tenant testified that prior to signing the tenancy agreement the tenant viewed the unit briefly as the current tenant was sleeping. The tenant testified that later she was able to return to the unit to put a few belongings into the spare bedroom with permission of the landlords and the current tenants. At that time the current tenants were cleaning the unit so the tenant could not view the unit properly. The tenant testified that on March 31, 2014 the tenant met the landlords at the unit and signed the lease. The tenant then did a walkthrough of the unit with the landlords and identified many areas that required work. The tenant testified that there was a strong mildew smell, problems with the bathroom ceiling and floor. The landlord stated that they would be willing to redo the roof and take out any walls to find mildew. The landlords left the tenant a copy of the move in inspection report to fill in and agreed to return the next day to do the inspection report with the tenant. The tenant testified that on April 01, 2014 the tenant arrived at the unit expecting to move in and found the unit was not habitable. The kitchen cupboards were very dirty and required painting, window frames in the back bedroom and living room had black mould in the corners, the garage was full of the previous

tenants' belongings and garbage, the walls had cobwebs and scuff marks and some light switches had been taped over

The tenant testified that she started to feel sick and developed a headache so on the way home from the unit the tenant called the landlord and said that she could not live in a construction zone as the tenant had concerns about the landlord tearing out the walls and roof. The tenant testified that she returned the next day with a mover and collected her few belongings, took photographs of the unit and left the keys. The tenant then notified the landlords that she would not be moving into the unit. The tenant testified that she had taken a day off work to move into the unit; however, as the unit was not fit for occupation the tenant seeks to recover lost wages for the day of \$320.00. The tenant also seeks to recover moving costs. The tenant testified that originally she had applied for \$300.00 but amends her claim to \$200.00 for two days of moving costs at \$100.00 for the first day when her television and bed were moved into the unit prior to taking possession and \$100.00 for the second day when the mover had to take these items out and put them into storage. The tenant seeks to recover storage costs of \$37.00.

The tenant testified that as the unit was not fit for occupation then the landlords should return the tenant's security deposit of \$1,000.00. The tenant also seeks to recover the \$50.00 filing fee from the landlords.

The landlords disputed the tenant's claim. The landlord EG testified that the tenant was not rushed through the first viewing of the unit. When they arrived one of the current tenants was sleeping but he did wake up and the tenant was able to see the entire unit. The tenant was very excited to move into the unit but was warned that it would be in a mess because three bachelors had been living there and the house was full of gym equipment and smelt like a men's locker room. EG testified that they gave the tenant permission to store a few items in the garage but were not aware that she had stored them in the house.

MB testified that the tenant signed the lease but later changed her mind. The tenant described the house as a disaster but this is untrue. This house is 2,400.00 square feet with four bedrooms. The house was not unlivable and although the landlords recognised that some cleaning and repairs were required after the previous tenants had vacated they were willing to remedy these things quickly. The whole house was thoroughly cleaned, the bathroom ceiling and floor were repaired and the garage was cleared of the previous tenants belongings all within a few days of April 01, 2014. EG testified that they could not do it sooner as the previous tenants vacated on March 31, 2014 and this tenant took possession on April 01, 2014.

EG testified that the tenant had seen the kitchen and said she wanted to paint it. EG testified that one of the light switches in the living room was dormant because it operated the light in the downstairs unit. This switch had been taped over to prevent it being used by the upstairs tenant. If the tenant had allowed the landlord to do the inspection this could have been explained to the tenant. EG testified that when they talked about the roof and walls this was just to reassure the tenant that the landlords were willing to do any work that was required if mildew was found in the house; however, no mildew was found and the repairs required were minimal and could have been completed with the tenant living in the house. EG testified that the tenant did not give them the opportunity to rectify any of the deficiencies before the tenant gave the landlords notice that she would not be moving into the unit.

The tenant argued that the landlords had said the unit would be clean and ready to move into on April 01, 2014 the landlords did not mention that any repairs would be done quickly and did not offer to paint the kitchen cupboards. The landlords asked the tenant to fill in the condition inspection report.

The landlords argued that the bedroom window frames that were dirty were in the smaller bedroom normally used as an office and was not on the window in the master bedroom. EG testified that the reason they asked the tenant to complete the report was because it was nine o'clock at night, the tenant was tired after working all day and the

landlords had agreed to meet the tenant the next day when it was light to go through the report and discuss repairs.

MB testified that when the tenant reneged on the tenancy agreement the landlords were able to contact some of the other interested parties that wanted to rent the unit before the tenant agreed to rent it and paid the security deposit to secure the unit. MB testified that one of these prospective tenants still wanted the unit and the landlords were able to re-rent the unit for May 01, 2014. The landlords therefore seek to recover a loss of rental income from the tenant for April of \$2,000.00.

The landlords seek an Order to keep the security deposit of \$1,000.00 to offset against the loss of rent. The landlords also seek to recover their filing fee of \$50.00 from the tenant.

The tenant asked the landlords if they are stating that the house was in a rentable condition for the entire month of April. The landlords responded that they had the rental unit cleaned up within a few days and all repairs had been made.

The landlords asked the tenant why the tenant called the landlords just a few hours after signing the lease agreement to inform them the tenant was not going to move into the unit and why did the tenant ask the landlords not to deposit her rent cheque. The tenant responded that she did this because she was not going to move into the unit. The landlords asked the tenant why the tenant did not give the landlords time to make the repairs and clean the unit. The tenant responded that from her conversation with EG it was indicated that major work was required on the roof and walls may have to come down inside the unit. The landlords did not indicate that this work would just take a week as the repairs were considerable. The landlords asked the tenant if they were just trying to reassure the tenant that they were willing to do any work required and not that this work was actually required. The tenant responded that the landlords did not give the tenant a time frame for work to be completed

### Analysis

With regard to the tenant's claim to recover the security deposit; I have considered the documentary evidence and testimony before me and find the tenant did enter into a tenancy agreement for a three month term starting on April 01, 2014. The landlords are required to provide the tenant with a rental unit that is fit for occupation on that date. The landlords have testified that the unit was fit for occupation and just needed to be cleaned up and some minor repairs made. The landlords' testified that this work was completed in a timely manner after the previous tenants moved out on March 31, 2014. The tenant has claimed that the unit was not fit for occupation and has provided some photographic evidence showing the kitchen cupboards, the window frames in a bedroom, the bathroom, a bedroom ceiling and a closet, that did require some additional cleaning, touch up painting and repairs. I am not satisfied; however that these issues, standing alone, should have prevented the tenant taking possession of the rental unit on April 01, 2014 and continuing with the tenancy at that time.

The tenant had been given ample opportunity to view the rental unit prior to signing the lease and the landlords have shown that the cleaning and minor repairs were completed in a timely manner. The tenant should have engaged the landlords in conversation to determine the extent of any repairs required before assuming that the roof and walls would have to be repaired which would have resulted in a major inconvenience to the tenant. As work of this nature was not required the tenancy could have continued and the tenant would have been at liberty to have filed a claim for minor inconvenience or for compensation for any days from April 01, 2014 that the tenant could not have occupied the rental unit. I therefore find the tenant's application to recover the security deposit is dismissed.

With regard to the tenant's claim to recover a missed day from work of \$320.00, the movers costs of \$200.00 and a storage locker of \$37.00; I am not satisfied that the tenant can hold the landlords responsible for costs of this nature as it was the tenants choice to not move into the rental unit without first determining what the extent of any

repairs would likely have been. These sections of the tenant's claim are therefore dismissed.

With regard to the landlords' claim for a loss of rent for April, 2014; I am satisfied that the tenant viewed the rental unit on more than one occasion and am satisfied that the landlord did warn the tenant that the unit had been occupied by three young men and that it may require some additional cleaning. I am further satisfied that the landlords acted in a timely manner to do the additional cleaning and minor repairs that were found to be required to the unit after the previous tenants vacated. A tenant must have a strong and compelling reason to end the tenancy before the end of the fixed term and show on a balance of probabilities that the landlords had not complied with the *Act*. It is my decision that the tenant did not give the landlord the opportunity to clean the unit and make the repairs before deciding not to move into the unit on April 01, 2014. The tenant had signed a three month tenancy agreement and therefore the earliest the tenant could have legally ended the tenancy would have been at the end of that three month period.

The landlords suffered a financial loss for April, 2014; however, the landlords were able to mitigate any further loss by getting the rental unit re-rented as quickly as possible on May 01, 2014. I therefore find in favour of the landlords' claim to recover a loss of rent for April of \$2,000.00.

I Order the landlords to keep the security deposit of \$1,000.00 pursuant to s. 38(4)(b) of the *Act* in partial satisfaction of their claim.

As the landlords have been successful in this matter I find the landlords are entitled to recover the filing fee from the tenant of \$50.00 pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,050.00** pursuant to s. 67 and 72(1) of the Act. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

The tenant's application is dismissed in its entirety without leave to reapply.

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: August 26, 2014

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Residential Tenancy Branch

