



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 08, 2014, by the Landlord to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord, his legal counsel, the Tenant and his legal counsel. The applicant and respondent gave affirmed testimony and confirmed receipt of evidence served by the other. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Has the Landlord proven entitlement to a monetary award?

### Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on October 1, 2011 and was scheduled to end October 31, 2014. The Tenant was required to pay rent of \$1,425.00 on the first of each month and on October 1, 2011 the Tenant paid \$412.00 as the security deposit plus \$300.00 as the pet deposit. No condition inspection report forms were completed at move in or at move out. The rental house was built in 1964 or 1965 and was owned by the Landlord and his former wife for approximately seven years. The Landlord and his former wife resided in the property until 2011 until they rented the property to this Tenant.

The Landlord pointed to the tenancy agreement addendum provided in evidence and argued that the Tenant entered into the fixed term tenancy agreeing to each term outlined in the addendum. The Landlord argued that an important part of the tenancy was the landscaping as provided at item # 7 of the addendum which states:

*The tenant agrees to maintain the landscaping of... (rental unit address) ... at the same standard as previously maintained by the Landlord.*

The Landlord stated that he was co-owner of the property with his ex-wife and that it was always their intention to sell the house. They had agreed to rent the property to this Tenant because he indicated that he wanted to maintain the landscaping as a hobby and that he would be interested in buying the property at the end of the fixed term.

The Landlord testified that he did not conduct regular inspections of the property during the tenancy. He clarified that he was "lax" in inspecting the property as he believed the Tenant would be purchasing it at the end of the tenancy, so he was not that concerned about what the Tenant did to the property. The Landlord said he received a letter from the Tenant dated July 19, 2013, which indicated the Tenant was ending the tenancy effective September 30, 2013. The Tenant vacated and the security deposit and pet deposit were returned to the Tenant.

The Landlord submitted that his monetary claim of \$25,537.82, as outlined on the monetary order worksheet provided in evidence, stems from the following two issues: (1) the Tenant breached the tenancy agreement by ending the tenancy prior to the end of the fixed term; and (2) the Tenant left the property in a condition that reduced the price the Landlord was able to sell the property for. The amount claimed consists of: \$20,000.00 for loss of value on sale of property; \$2,850.00 loss of rent; \$2,625.00 site cleanup; \$15.14 for paint; \$27.68 for paint supplies; and \$20.00 for additional paint supplies.

In support of his claim, the Landlord submitted photographs that had been taken of the property starting in 2005, prior to the landscaping project, and went up to July 2013. Specifically, pictures 1 – 23 were taken between 2005 and 2009; picture 24 was taken in May 2011, five months before the start of the tenancy; pictures 26 and 27 were taken in 2012 during the tenancy and do not show the landscaped yard; and pictures 28 through 37 were taken in July 2013, two months prior to the end of the tenancy. The Landlord argued that the difference in the property from the start to the end of the tenancy was "shocking", when considering how the Tenant pruned back the two trees and let the weeds overgrow the path.

The Landlord pointed to a letter he had obtained from his real estate agent in support of his claim that the property was sold at a reduced amount due to the condition of the landscaping. The Landlord argued that, once the Tenant ended the tenancy, he was faced with either trying to re-rent the unit or list it for sale. He stated that because he was still co-owner with his former wife and because they had wanted to sell it all along,

they decided to sell it. He hired the landscaping company to come in and clean up and repair the yard, as per the invoice provided in evidence. The Landlord and two helpers also did several hours of work to clean up and ready the property for sale. The property was listed and was sold at a reduced amount in November 2013. As such, the Landlord lost rent for October and November.

The Tenant testified and confirmed that he had ended the tenancy prior to the end of the fixed term lease by providing the Landlord written notice on July 19, 2014 to end the tenancy effective October 1, 2014.

The Tenant argued two Residential Tenancy Policy Guidelines as follows:

*Residential Tenancy Policy Guideline # 3 which states that where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord has two options. These are: (1) Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment; (2) Accept the abandonment or end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy.*

The Tenant submitted that the Landlord had not informed him of his intention to claim for loss of rent for the remainder of the fixed term, and therefore, his claim should be dismissed.

*Residential Tenancy Policy Guideline # 5 which states that where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.*

The Tenant argued that despite him providing the Landlord 2 ½ months notice to end the tenancy the Landlord made no effort to re-rent the unit. He noted that there was no evidence provided that would indicate the Landlord advertised the unit for rent or made any effort to mitigate his loss of rent.

The Tenant argued that the real estate letter provided by the Landlord indicated the Landlord was “forced” to sell the property, when in fact he had another option and that was to re-rent the property. Furthermore, this letter indicated that the Landlord was at a disadvantage to sell the property last fall rather than when the Tenant’s lease was up. The Tenant questioned how that was a disadvantage as the property was sold in the fall in November and his lease would have been up in the fall, on October 31, 2014.

The Tenant testified that there were no condition inspection report forms completed at move in or at move out; therefore, the Landlord has failed to provide sufficient evidence to establish a loss. He argued that the point in time to compare the property was the day before the Tenant took possession and the day the Landlord took possession at the end of the tenancy. The Tenant submitted that on the date the Tenant took possession of the property in October 2011, the property was not in as pristine condition as the Landlord argued it was. He stated that he removed all of the pruning and gave away the larger pieces to neighbours for firewood; therefore, there was no debris that had to be removed at the end of the tenancy.

The Tenant provided testimony in response to each item the Landlord had listed for damages on the "Monetary Order Worksheet – Additional Page". He did not dispute any of the prunings he had performed on the trees and shrubs and argued that any work he had done had been done with the Landlord's prior knowledge and consent. He noted that the watering system had frozen and broke the first winter because the Landlord informed him it did not need to be blown out.

The Tenant submitted that the trees and shrubs were in much better condition when he moved out than what they were at the start of the tenancy. He noted that the Landlord did not comment on the yard when the Tenant moved out and argued that he left the inside of the house very clean.

In closing, the Landlord stated that he had put the Tenant on notice of his intent to seek his losses in a letter sent by his legal counsel on August 27, 2013, which was issued without prejudice and was sent registered mail to the Tenant's forwarding address. The Landlord submitted that he had done his best to minimize his loss by cleaning up the property, listing it for sale, and selling it within two months. He argued that the absence of an inspection report is not fatal to the claim.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

The applicant must meet all four criteria in order to establish a claim.

Section 45(2)(b) of the Act stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

Based on the above, I find the Tenant breached section 45(2)(b) of the Act when he gave notice and ended his tenancy effective September 30, 2013; thirteen months prior to October 31, 2014, the end of the fixed term as stipulated in the tenancy agreement. Accordingly, I find the Landlord has met criterion # 1, as listed above on this ground.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Upon review of the photographic evidence, and notwithstanding the Landlord's arguments that the property was handed over to the Tenant with immaculate landscaping, I accept the Tenant's arguments that the Landlord did not provide sufficient evidence to prove the actual condition of the property on the day before or on the day the Tenant took possession. I make this finding in part because the most recent photographs submitted by the Landlord, prior to the start of the tenancy, were taken in May 2011, four months prior to the start of the tenancy. Landscaping can change dramatically in a four month period in the climate where the rental unit is located. Furthermore, the Landlord submitted that he was "lax" and did not monitor the property and did not have concern with what the Tenant did to the property, as he thought the Tenant would be purchasing it.

Based on the foregoing, and in the absence of specific detailed instructions on what was required for the landscaping maintenance, I find the Landlord submitted insufficient evidence to prove the Tenant breached item # 7 on the tenancy agreement addendum. Therefore, the Landlord has failed to meet criterion # 1 with respect to his claim for site cleanup; and that claim is dismissed without leave to reapply.

As submitted by the Landlord, the Tenant's breach caused him to suffer a loss of rental income for October and November 2013, two months after the Tenant breached the tenancy agreement and just prior to the Landlord selling the property. Accordingly, I find the Landlord has met criterion # 2, as listed above.

The Landlord has submitted a claim for two month's lost rent of \$1,850.00 (the reduced amount calculated at 2 x \$1,425.00) plus \$20,000.00 which he argued was the loss in the value of his property due to the Tenant's landscaping; and \$2,850.00 for yard clean up. I accept that the Landlord has proven a loss equal to two month's lost rent; however, I find there is insufficient evidence to support the claim that the property had lost its value by \$20,000.00, that the yard waste removal was material acquired during the tenancy, or for painting and painting supplies. Accordingly, I find the Landlord has met criterion # 3, and has proven a loss of \$1,850.00.

It was undisputed that the Landlord made no effort to re-rent the property once he received the Tenant's notice to end the tenancy early. Rather, the Landlord reverted to his "original plan to sell the property", listing it and selling it within two months. Based on the foregoing, and in absence of proof that the Landlord made any effort to re-rent the unit, I accept the Tenant's argument that the Landlord has failed to do what was reasonable to mitigate his loss, as required by section 7 of the Act. Furthermore, I find the Landlord made a personal choice to ignore what the Tenant was doing to the property, as he thought the Tenant would be purchasing it.

Based on the above, I find the Landlord has provided insufficient evidence to meet criterion # 4, and has failed to meet the required test for a claim for damage and loss, as listed above. Accordingly, I dismiss the Landlord's claim in its entirety, without leave to reapply.

The Landlord has not succeeded with their application; therefore, I decline to award recovery of the filing fee.

#### Conclusion

I HEREBY DISMISS the Landlord's claim, 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: September 14, 2014

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Residential Tenancy Branch

