



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNR, MND, MNSD, FF

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income, the cost of repairs, painting, changing locks and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of the claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to a monetary order to recover loss of income, the cost to repair, paint, change locks and the filing fee?

### **Background and Evidence**

The tenancy started on August 15, 2013. The monthly rent was \$950.00 due on the first of the month. Prior to moving in the tenant paid a security deposit of \$475.00 and a pet deposit of \$200.00.

The tenant stated that in March she gave verbal notice to the landlord to end the tenancy effective April 30, 2014. The tenant added that the landlord informed her that his friend had a place she could rent on June 01, 2014 and asked the tenant to give him a written notice to say that she would continue to stay until June 01, 2014.

The tenant testified that she believed that the landlord had found a renter for this rental unit, for June 01 and therefore to avoid a loss of income, he convinced her to stay and put it in writing. The tenant added that shortly after, the landlord informed her that his friend's place was no longer available and therefore, the tenant started looking for another place to rent. The tenant found a rental unit for May 01 and moved out on April 15, 2014.

The landlord denied having told the tenant about his friend's rental unit being available for her to rent on June 01, 2014.

The landlord stated that sometime in the middle of April, he left for Europe and returned May 05, 2014. He stated that on May 01, 2014, the tenant had returned only one of the four keys she was given. The landlord testified that he found that the rental unit was damaged and is claiming the cost of fixing the damage.

The landlord stated that the flooring was repaired in January 2014 following a water leak. In April when the tenant moved out, the laminate at the entrance to the unit was lifting and was water damaged. The tenant denied having caused damage to the flooring and stated that the moisture from the water leak was probably inside the floor.

The tenant agreed that there were stickers on the walls of one bedroom and that she had damaged the wall from having mounted a television onto it.

The landlord is claiming a total of \$560.00 to repair the above damage and has filed a receipt to support the claim. The landlord stated that approximately \$400.00 was towards the repair of the flooring and the balance of \$160.00 was for the repair and painting of the walls.

The landlord stated that the tenant returned the third of four keys on May 15. The landlord replaced the locks and is claiming \$72.78 towards the purchase of the lock. The landlord filed a receipt.

The landlord stated that he got the repair work done from May 19 to May 24 and started advertising the availability of the unit on June 04, 2014. The landlord is claiming loss of income for the month of May 2014.

### **Analysis**

#### **1. Loss of income for May 2014 - \$950.00**

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I find the tenant gave the landlord written notice to end the tenancy on April 03, 2014 and moved out on April 15, 2014, thereby causing the landlord to suffer a loss of income for the month of May 2014.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act* or their tenancy agreement must do whatever is reasonable to minimize the loss.

In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. In this case, in order to minimize the loss, the landlord had to make efforts to re-rent the unit. However, the landlord testified that he did not make efforts to re-rent the unit because of the condition it was left in.

Pursuant to *Residential Tenancy Policy Guideline #3*, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

In this case, the tenant moved out on April 15 and the landlord started repairs on May 19 which is more than one month after the tenant moved out. Therefore even if I find that the tenant caused damage, the landlord has not proven that he took steps to start or complete the repairs in a timely manner.

In addition the landlord started advertising the availability of the unit on June 04, 2014, which is one to the reasons why the unit remained vacant for the month of May 2014 thereby resulting in a loss of income to the landlord. Therefore I find that the landlord did not take steps to mitigate his losses and accordingly, his claim for loss of income is denied.

#### Cost of repairs

The tenant agreed to having caused damage to the wall when she mounted her television set on it. She also agreed to the presence of stickers on the walls of a bedroom. As per the landlord's testimony, this repair cost approximately \$160.00. Accordingly, I award the landlord this amount.

Based on the testimony of both parties, I find that the initial flooring problem was caused by a water leak that required the flooring to be replaced. A few months later, the laminate started to lift and the landlord stated that this was caused by the tenant allowing water to collect on the flooring. The tenant denied this. I find that the landlord has not proven that this subsequent water damage was caused by the tenant and therefore I dismiss the landlord's claim for \$400.00 to replace the flooring.

The tenant had returned at least one key to the landlord on May 01, 2014. The landlord could have rekeyed the lock instead of replacing the lock.

In addition, pursuant to s.25 of the *Residential Tenancy Act*, the landlord at the request of a new tenant would have to replace or rekey the locks at his own expense anyway. Accordingly, I dismiss the landlord's claim of \$72.78.

Filing fee - \$50.00

The landlord has proven a portion of his case and therefore I award him the cost of filing his application.

Overall the landlord has established a claim of \$210.00 which consists of \$160.00 for repairs and \$50.00 for the filing fee. I order that the landlord retain this amount from the security deposit of \$ 475.00 and pet deposit of \$200.00, in full satisfaction of the claim.

In this application the landlord requested the retention of the security and pet deposits in satisfaction of the monetary claim. Because most of the landlord's claim has been dismissed, it is appropriate that I order the return of the balance of the tenant's deposits. I so order and I grant the tenant a monetary order in the amount of \$465.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

**Conclusion**

I grant the tenant a monetary order in the amount of \$465.00. The landlord must pay \$465.00 to the tenant within 15 days of receipt of this decision.

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 18, 2014

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Residential Tenancy Branch

