



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MDSD & FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Amended Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other by mailing, by registered mail to where the other party resides. With respect to each of the applicant's claims I find as follows:

### Preliminary Matters:

It is no longer necessary to consider the tenants' application to cancel the 10 day Notice to End Tenancy and the landlord's application for an Order for Possession as the tenants have vacated the rental unit and the landlord has regained possession.

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to A Monetary Order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

- d. Whether the tenants are entitled to a monetary order and if so how much?
- e. Whether the tenants are entitled to recover the cost of the filing fee?

### Background and Evidence

The landlord and the tenants (plus a 3<sup>rd</sup> party JH) entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on May 1, 2013 and end on May 1, 2014. JH lived in the downstairs suite. The tenants lived in the upstairs suite. The rent was \$2300 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$1250 at the start of the tenancy.

JH vacated the rental unit at the end of April 2014. The landlord testified the remaining tenants continued to rent the entire house and were responsible to pay the full \$2300. The tenants dispute this. They testified they agreed with the landlord to rent the upstairs portion. While an employee of one of the tenants rented the downstairs portion for the months of June and July this was paid to the landlord in cash. That employee left at the end of July. The landlord agreed to rent the basement to the tenant's father in September. However a dispute arose and the father was required to leave. The tenants provided the landlord with a cheque in the sum of \$2300 for September. However, it was returned NSF. The landlord served a 10 day Notice to End Tenancy on the tenants that alleged the tenants had failed to pay the rent and the sum of \$2300 was due on September 1, 2014. The tenancy ended on October 1, 2014 when the tenant's vacated the rental unit.

### Landlord's Application - Monetary Order and Cost of Filing fee:

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher

than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

With respect to each of the landlord's claim I find as follows:

- a. The landlord claimed the sum of \$4050 in unpaid rent (\$900 for May, \$850 for August and \$2300 for September). The landlord is operating a business and has the obligation to ensure proper records are kept including the preparation of a new tenancy agreement. After hearing the disputed evidence of the parties I determined the landlord failed to prove the tenants agreed to rent the entire house after the fixed term tenancy came to an end on May 1, 2014. JH, one of the tenants to that agreement vacated the rental unit with the agreement of the landlord. The landlord did not take steps to end the tenancy when the downstairs portion of the rent for May and August were not paid. When the rent cheque for September was returned NSF the Notice to End Tenancy alleged the sum of \$2300 was owed. The landlord did not include the unpaid balance of the rent for May and August. This is more consistent with the evidence of the tenants that the landlord agreed to rent the upstairs portion only to these tenants. I dismissed the claim for the unpaid balance for May and August. I determined the landlord is entitled to \$2300 for the rent for September as the tenant's father had moved into the downstairs suite and the tenants provided the landlord with a cheque in that sum which was returned NSF. I do not accept the testimony of the tenants that they did not have to pay the rent for September.
- b. I determined the landlord is entitled to \$45 for the NSF fee charged by his bank.
- c. I determined the landlord is entitled to \$84.11 for the dump fee.
- d. The landlord claimed the sum of \$140 for the cost of fuel. I determined the amount claimed is reasonable and the landlord is entitled to this sum.
- e. The landlord claimed the sum of \$300 for labour for cleanup of garbage for October 2, \$300 for clean up of garbage on October 3 and \$500 for clean up of

garbage on October. The photographs indicate the tenants left a considerable amount of garbage. However, the amount claimed is excessive and not supported by the evidence. The landlord is entitled to \$400 of this claim.

- f. I dismissed the claim of \$300 for truck rent and fuel. The landlord failed to provide an invoice or bill to support this claim and failed to prove he has incurred this cost.
- g. The landlord claimed \$300 for floor damage. The tenants agreed to this claim at the post tenancy inspection.
- h. I determined the landlord is entitled to \$100 for the damage to the furnace door as the tenants agreed to this charge at the post tenancy inspection.
- i. I dismissed the landlord's claim of \$250 for the upstairs floor as this claim has not been proven.
- j. I dismissed the claim for the cost of front door handle in the sum of \$40 as the work has not been done and the claim has not been proven.
- k. I determined the landlord is entitled to \$150 for the cost of carpet cleaning being a reasonable sum for the cost of cleaning the carpets.
- l. I determined the landlord is entitled to \$200 for the cost of cleaning the blinds as this is a reasonable sum and the cleaning was necessary as the tenants were smokers.
- m. I determined the landlord is entitled to \$125 for the cost of replacing light bulbs.
- n. I determined the landlord is entitled to \$100 for the cost of window washing (reduced as the amount claimed in the sum of \$200 is not reasonable and not supported by the evidence).
- o. I determined the landlord is entitled to \$100 for the cost of cleaning the appliances (reduced as the amount claimed in the sum of \$200 is not reasonable and not supported by the evidence).
- p. I determined the landlord is entitled to \$100 for the cost of removal of the tenant's trailer.

In summary I determined the landlord has established a claim against the tenants in the sum of \$4144.11 plus the sum of \$100 in respect of the filing fee for a total of \$4244.11.

Security Deposit

**I determined the security deposit plus interest totals the sum of \$1150. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$3094.11.**

Tenants' Application:

With regard to each of the tenants' claims I find as follows:

- a. I dismissed the tenants' claim for the security deposit as it has been applied to reduce the landlord's claim.
- b. The tenant claimed the sum of \$1500 for the cost to replace his tenant trailer that was disposed of by the landlord. The tenant produced documentation that it was purchased for that price 2 years ago. Section 25 of the Residential Tenancy Regulations provide as follows:

**Landlord's obligations**

**25 (1) The landlord must**

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
  - (b) keep a written inventory of the property,
  - (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
  - (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.
- (2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that
- (a) the property has a total market value of less than \$500,
  - (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
  - (c) the storage of the property would be unsanitary or unsafe.

(3) A court may, on application, determine the value of the property for the purposes of subsection (2).

The photographs produced by the landlord indicate the trailer was in poor condition. The landlord testified there was raccoons living in the trailer and it was unsafe and unsanitary. The tenants failed to provide any evidence as to the present day market value. I determined the trailer was of little value if any. The tenant had abandoned it and the landlord had the right to dispose it.

Summary:

In summary I determined the landlord has established a claim against the tenants in the sum of \$4144.11 plus the sum of \$100 in respect of the filing fee for a total of \$4244.11. I determined the security deposit plus interest totals the sum of \$1150. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$3094.11. I ordered that the tenants claim be dismissed.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court 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: October 29, 2014

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Residential Tenancy Branch

