



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LANDLORD: MND, MNR, MNDC, FF  
TENANT: MNDC, MNDS, FF

## **PRELIMINARY MATTERS**

The original hearing for this matter was held on December 1, 2014. During that hearing it was discovered that the Tenants' application and file had not been received by the Arbitrator therefore the matter was adjourned to January 6, 2015. As well the Landlord indicated at the first hearing that he did not receive a copy of the Tenants' application in the hearing package the Tenant sent to him. The Arbitrator requested the Tenant to re-serve the Landlord the Tenants' hearing package so that the parties would all have the same information. At the second hearing the Tenant said she refused to re-serve the Landlord her hearing package and she made a complaint to the ombudsman that she was treated unfairly by the Arbitrator. As the Landlord's agent said he did not have a copy of the Tenants' application the Arbitrator explained to the Landlord's agent that the Tenant would explain her application to the Landlord's agent during the hearing. The Landlord's agent agreed to continue the hearing without a copy of the Tenants' application as he believed he understood what the Tenants were applying for from other information provided. The Arbitrator indicated the Tenant would go through her application point by point and the Landlord's agent could ask question if something was not clear. Both parties were asked if they felt this was fair and a reasonable way to continue the hearing. Both parties agreed this was fair and reasonable.

## **Introduction**

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking a monetary order for compensation for damage to the unit site or property, for unpaid rent, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for the return of the Tenants' security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on October 18, 2014, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on November 8, 2014 in accordance with section 89 of the Act.

The Tenants and the Landlord's agent confirmed that they had received the other party's hearing packages.

### Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation for the damages and if so how much?
3. Is there unpaid rent and if so how much?
4. Is the Landlord entitled to unpaid rent and if so how much?
5. Is the Landlord entitled to retain the Tenants' security deposit?

Tenant:

1. Are there damages or losses to the Tenants and if so how much?
2. Are the Tenants entitled to compensation for loss or damage and if so how much?
3. Are the Tenants entitled to the return of the security deposit?

### Background and Evidence

This tenancy started on September 1, 2012 as a fixed term tenancy for 1 year with an expiry date of August 31, 2013. The parties agreed that the tenancy then continued on a month to month basis. Rent was \$1,900.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant said they paid the rent weekly to the Landlord. The Tenants paid a security deposit of \$1,900.00 on August 17, 2012. A move in condition inspection report was completed on August 31, 2012 and a move out condition inspection report was completed on September 30, 2014 which was not signed by the Tenants but signed by the Tenants' representative S.J. The Tenant said the representative S.J. was only told to return the keys to the Landlord.

During the first hearing the Landlord's agent outlined the Landlord's claims as follows:

1. Unpaid rent for October, 2014	\$1,900.00
2. Less rent over payment	\$ 190.00
3. Carpet Cleaning	\$ 499.70
4. Labour for cleaning and repair work	\$ 420.00
5. Materials and light bulbs	\$ 277.39
6. Replacement Faucet	\$ 303.13
7. Filing Fee	<u>\$ 50.00</u>
Total	<u>\$3,260.22</u>

The Landlord's agent submitted both the move in and move out condition inspection reports, photographs of the claimed damages and paid receipts for the repairs and carpet cleaning. The Landlord's agent said the Tenants damaged the rental unit during the tenancy and these are the costs they incurred to repair and clean the unit.

Further the Landlord's agent said the Tenants gave him Notice on September 10, 2014 by text message that they were ending the tenancy on September 30, 2014. The Landlord's agent continued to say that he tried to advertise the rental unit on-line on September 18, 2014, but the advertisement did not appear on the web site until September 22, 2014. The Landlord's agent continued to say that he showed six potential tenants the unit on September 24, 2014 and to two potential tenants on September 25, 2014. The Landlord said he rented the unit to a new tenant starting on November 1, 2014. As a result the Landlord's agent said he is requesting lost rental income for October, 2014 because the Tenants did not give him proper notice to end the tenancy. The Landlord's agent continued to say that because the Tenants paid the rent weekly they had paid the rent up to October 3, 2014 therefore he has reduced his claim for lost rental income by three days or \$190.00. The Landlord said his claim for lost rental income is  $\$1,900.00 - \$190.00 = \$1,710.00$ .

The Tenant said that the rental unit was in poor condition when they moved into the unit. The Tenant pointed out many of the issues on the move in condition inspection report and said the rental unit was not well maintained over the last 18 years. As a result the Tenant said the damages the Landlord is claiming may have been there at the start of the tenancy or it may have been a result of normal wear and tear in an old poorly maintained rental unit. The Landlord agreed in the second hearing that the rental unit was in poor condition when the Tenants moved in and there was damage and cleaning issues indicated on the move in condition inspection report. These issues included loose hand rails, stains on the carpet, leaky faucet, painting issues, the floor was lifting, there were broken tiles on the fireplace, water stains on the ceiling, other wear items in the house and the yard was overgrown. The Tenant said during the tenancy they improved the house and maintained the yard to the point that neighbours and the Landlords complemented them on how well they were caring for the rental unit. The Tenant said she was shocked when the Landlord made a claim for damages and cleaning. The Tenant continued to say that she submitted photographs of every room

after they had the cleaners come in and the photographs show the house is in good condition and in a clean state.

The Landlord's agent said that after the Tenant's cleaner left the house it was clean on the surface, but his cleaner had to clean under the appliances and in the cupboards and this cost him but he is not claiming these amounts.

The Tenant continued to say the Landlord is claiming a faucet that was leaking at the start of the tenancy as indicated in the condition inspection report and the Tenants actually replaced it with a new faucet. The Landlord's agent said he thought the original faucet was of better quality so he replaced the faucet the Tenants put in. The Tenant said the replacement faucet was good quality.

With regards to the carpet cleaning the Tenant said the carpets were stained as the moved in condition inspection report indicates and they were old and could be replaced. The Tenant also said the Landlord's agent had told them he was going to paint the unit after they moved out so the carpets would be cleaned after the painting.

The Tenant continued to say the repairs that the Landlord is claiming are all normal wear and tear in an older poorly maintained rental unit. The Tenants said they took good care of the unit and they are not responsible for normal wear and tear. The Tenant said the Landlord's claim for labour to make repairs of \$420.00 and material \$277.39 are the Landlord's responsibility.

Further the Tenant said they did not give a full month notice to end the tenancy to the Landlord as they were moving across the country for an opportunity with her husband's family and it is the Landlord's obligation to find new tenants as soon as possible to mitigate any potential loss. The Tenant said the Landlord did not genuinely look for a new tenant for October 1, 2014 as the Landlord was going to paint the unit after the Tenants move out. As a result the Tenant said the Landlord did not mitigate her potential loss of rental income and therefore the Tenants are not responsible for the October, 2014 rent.

The Tenant concluded her remarks about the Landlord's application and began to explain the Tenants' application for compensation for loss or damage and to recover the security deposit. First the Tenant said there was no new damage in the unit and the rental unit was clean when they left so the Landlord has no claim against their security deposit for damages or cleaning. The Tenant said they hired a cleaning company to clean the unit and the Tenant provided photographs to show the condition of the rental unit at the end of the tenancy. The Landlord's agent said the photographs show the unit was clean on the surface, but there were damages caused by the Tenants which are in the Landlord's application.

The Tenant continued to say they are claiming a \$1,000.00 for loss of property as the Landlord entered the property before the end of the tenancy and removed several garbage bags that the Tenants' representative S.J was going to take care of. As well

the Tenant said that she is missing things from the movers and the Tenant believes the Landlord or other people the Landlord allowed into the rental unit may have taken things that she is missing. The Tenant did not have a list of the missing items but the Tenant estimated the items value at \$1,000.00. The Landlord's agent said the Tenants' representative S.J. told him that she was asked to take the garbage bags to the dump and that S.J. was in the rental unit while he was there.

Further the Tenant is claiming \$1,500.00 for pain and suffering as a result of the Landlord entering her rental unit without her permission after the Tenants move out. The Tenant said the Landlord entered the unit three times during the time period of September 27 to September 29, 2014. The Tenant said her representative S.J. told her the Landlord was in the unit on September 27, 2014 while the Tenants were in transit across the country. The Tenant said this made her very nervous because the movers were coming on September 28, 2014 so her belongings were in the unit and the Landlord and other people with the Landlord had access to her things. As a result of the Landlord being in the unit the Tenant said she text messaged the Landlord on the morning of September 29, 2014 to stay out of the unit until the tenancy was over. The Tenant said she "Googled" how much compensation she should apply for. The Tenant said she is requesting \$1,500.00 for the stress caused to her because the Landlord entering the unit without permission.

The Landlord's agent said the Tenant wrote him an email giving him permission to enter the unit after the movers finished so that he could get the painting and repairs completed. The Landlord's agent said the email is in the evidence package. The Landlord's agent continued to say it was poor judgement on his behalf to go into the unit before the movers finished, but after the movers finished he had the Tenant's permission for enter to the unit on September 28 and 29, 2014. The Landlord add that when he was in the unit on September 27, 2014 the Tenant's reprehensive S.J. was with them and nothing was taken from the Tenant's belongings.

Further the Tenant said that she agrees with the Landlord's agent that they over paid the rent by \$190.00 and she would like that returned to her.

The Tenant said in closing that the Landlord has said a number of derogatory things about the Tenants and they are not true. The representative S.J. was only there to return the keys not to act as their representative. The rental unit was in poor condition at the start of the tenancy so the repairs the Landlord is claiming are normal wear and tear and the Tenants are not responsible for normal wear and tear. In addition the Landlord's agent may have removed her belongings and this has caused the Tenant a great deal of stress. As a result the Tenant is requesting \$1,000.00 for loss belongings and \$1,500.00 for pain and suffering as well as the return of their security deposit of \$1,900.00.

The Landlord's agent said in closing that the Tenants did not give him proper notice to end the tenancy on September 30, 2014 and he advertised and showed the property to 8 potential tenants before the tenancy ended. The Landlord's agent said he has

damages that he believes are more than normal wear and tear and are shown by the condition inspection reports to have happened during the tenancy. The Landlord's agent requested compensation for loss rental income and repairs and cleaning.

The parties were offered an opportunity to settle the dispute by mediation. The Landlord's agent offered to drop his damage claims and retain the security deposit for the October, 2014 rent. The Tenant declined the offer and said she would like to go to a decision from the Arbitrator.

### Analysis

Section 26 says 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.

Section 45 of the Act says a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this situation the Tenants gave the Landlord notice to end the tenancy by text messaging on September 10, 2014 that they were ending the tenancy on September 30, 2014. Notice to end a tenancy must be in writing and signed by the party that is giving the Notice. Text messaging is not considered formal written notice. Further the Tenants' notice on September 10, 2014 has an effective vacancy date of October 30, 2014 as the notice must be given for one month after the Landlord receives the notice and it based on the day of the month the rent is paid. The day in the month the rent is considered paid is when the full amount of the rent is paid.

Further section 7 of the Act says that a party requesting compensation must do whatever is reasonable to minimize or mitigate their loss.

In this situation the Tenants are claiming the Landlord did not genuinely try to rent the unit by October 1, 2014 and as such the Landlord should not be awarded the October, 2014 rent. The Landlord says he advertised the rental unit starting on September 22, 2014 and he showed the property to 8 potential new tenants. The Act says whatever is

reasonable to minimize or mitigate the loss not that the party has to eliminate the loss. Consequently I find the Landlord acted reasonably in advertising and showing the rental unit prior to October 1, 2014. Therefore I find a genuine effort was made by the Landlord to minimize or mitigate the loss of the October, 2014 rent.

Consequently the Tenants did not give the Landlord proper notice to end the tenancy and the Tenants do not have the right under the Act to withhold part or all of the rent. As well the Landlord acted reasonably in trying to mitigate the loss of rental income; therefore I find the Tenants are responsible for the rent of \$1,900.00 for October, 2014.

Further as both parties agree that the Tenants have an over payment of rent from September, 2014 of \$190.00 I award this amount to the Tenants.

With respect to the Landlord's claims for compensation for damages and cleaning I accept the Tenants testimony as well as the move in condition inspection report that indicates the rental unit is older, in poor condition and as the Tenant said was poorly maintained. In point the Landlord is claiming for carpet cleaning and the move in condition inspection report clearly states the carpets were stained. Consequently I find the Landlord's agent has not established grounds to support his damage claims. I dismiss without leave to reapply the Landlord's claim for cleaning, repairs, labour and materials and parts including the new faucet.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

With regard to the Tenants' claims the Tenant said that she does not have list of items that she believes were removed nor does the Tenant have any proof of value of the items that the Tenant alleges were removed by the Landlord. Consequently the Tenant has not proven a loss actually exists nor has the Tenant verified the loss; therefore I dismiss without leave to reapply the Tenants' claim for \$1,000.00 for lost items.

Further the Tenant has requested \$1,500.00 for pain and suffering due to the Landlord entering the rental unit after the Tenants had left but before the tenancy ended. The Landlord provided an email that gave permission to the Landlord's agent to enter the unit after the movers were finished. This includes the Landlord's agent entry on September 28 and the morning of September 29, 2014. The Landlord also provided an email from the Tenant stopping the Landlord's right to enter the unit sent to the Landlord September 29, 2014 which the Landlord complied with. Therefore the only unauthorized enter was on September 27, 2014 when the Landlord's agent entered the unit with his painter and the Tenant's representative S.J. Given that the Tenants' had a representative in the unit while the Landlord was there with his painter on September 27, 2014 and the other entries the Landlord made on September 28 and 29, 2014 were authorized by the Tenant, I find the Tenant has not established grounds to prove the Landlord has done anything to cause the Tenant pain and suffering. Given the situation

I understand the Tenant may have been uncomfortable or even stressed by the Landlord, but there is no evidence of an actual loss or damage caused by the Landlord's agent's entry to the rental unit. Consequently I dismiss without leave to reapply the Tenants' claim of \$1,500.00 for pain and suffering resulting from the Landlord's agent entering the rental unit after the Tenants had moved out but before the tenancy had ended.

As the neither the Landlord nor the Tenants have been fully successful in this matter, both parties are order to bear the cost of the filing fee of \$50.00 that they have already paid

Further I order the Landlord pursuant to s. 38 and 67 of the Act to keep part of the Tenants' security deposit in full payment of loss rental income. The Landlord will retain \$1,710.00 of the Tenants' security deposit and the Landlord is ordered to return \$190.00 to the Tenants forth with.

### Conclusion

The Landlord is order to retain \$1,710.00 of the Tenants security deposit.

The Landlord is ordered to return \$190.00 of the Tenants security deposit forth with.

The Landlord's damage claims are dismissed without leave to reapply.

The Tenants' damage claims are dismissed 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: January 07, 2015

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Residential Tenancy Branch



