



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDC, FF

### Introduction

This hearing was convened to address a claim by the landlords for a monetary order. Both parties participated in the conference call hearing.

At the outset of the hearing, the landlords amended their claim and withdrew all but 4 of their claims. The hearing proceeded to deal exclusively with those 4 claims.

### Issue to be Decided

Are the landlords entitled to a monetary order as claimed?

### Background and Evidence

The tenancy in question occurred in a holiday trailer into which the tenant moved after having resided in the landlord's home for a number of years. The parties agreed that the holiday trailer was new when the tenant moved into it, having been used by the landlords for just one weekend.

The tenant believed he began residing in the unit in August or September 2012 while the landlords believe he moved into the unit in approximately March 2012. They agreed that he vacated the unit in January 2013 and they further agreed that rent was set at \$550.00 per month.

The landlords filed an application for dispute resolution with the Residential Tenancy Branch and in a hearing held on January 25, 2013, an Arbitrator granted the landlord an order of possession and a monetary order for \$1,750.00 (the "January 25 Order"). The Arbitrator specified that the monetary order was for unpaid rent and recovery of the \$50.00 filing fee, but did not specify which months that award represented.

The landlords seek an award for unpaid rent for January, a month in which the tenant resided in the rental unit, and lost income for February as they claim the tenant abandoned his personal belongings in the unit. The landlords testified that the unit was not re-rented after the tenant vacated.

The tenant claimed that he returned to the rental unit to retrieve his belongings, but was prevented from doing so by the landlords. The landlords denied that he returned to the unit.

The landlords took the position that the January 25 Order was for rent owing in 2012 and did not include rent for January or February 2013. The tenants took the position that the January 25 Order included rent for January.

The landlords submitted a copy of a 10 day notice to end tenancy for unpaid rent (the "Notice") which was served on the tenant on December 14, 2012. The Notice stated that as of December 1, 2012, there was \$1,150.00 in rent owing.

The landlords testified that at the end of the tenancy, the surface of the sink was damaged. The landlords provided a photograph of the sink showing the scratch as well as invoices for the cost of the sink (\$166.13) and installation (\$62.17) and seek to recover these costs from the tenant. The tenant testified that he was unaware of scratches to the sink but stated that the sink was made of a cheap plastic rather than metal.

The landlords testified that a light in the unit was damaged at the end of the tenancy and the landlords had to pay \$36.89 to replace the light. They specified that the switch was non-functional, that it should not have broken through regular use in such a short period and that it was not covered by warranty. The landlords provided the invoice for the cost of replacing the light and seek to recover this cost from the tenant. The tenant testified that the switch was cheaply made and only worked for approximately one week. He stated that when it stopped working during the tenancy, he pulled the light out from the ceiling and jury rigged the wires to allow it to function.

The landlords testified that at the end of the tenancy, the carpets in the rental unit were heavily soiled and they had to have them cleaned at a cost of \$105.00 which they seek to recover from the tenant. The tenant testified that during the tenancy, a leak in the bathroom caused water to leak throughout the unit. The landlords responded that this would have been clean water which would not have caused the soiling evidence on the carpets and that in any rate, the leak only extended to the part of the unit which had linoleum flooring. The tenant noted that the landlords did not have the carpet cleaned

for 6 months after the tenancy ended and suggested that the soiling could have occurred from workmen who entered the unit.

The landlords seek to recover the \$50.00 filing fee paid to bring their application.

### Analysis

The *Residential Tenancy Act* (the “Act”) establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent’s action or inaction;
3. Proof of the value of that loss; and
4. Proof that the applicant took reasonable steps to minimize the loss.

First addressing the claim for loss of rent, I find it more likely than not that the January 25 Order included rent for the month of January. I have arrived at this conclusion because the Notice, which was served on the tenant 14 days after the rent was due, stated that as of December 1, \$1,150.00 was owing. It does not make sense that the landlords would serve a notice to end tenancy in mid-December which did not include the rent due in the month of December. Therefore, I find that \$1,150.00 was owing in December and as the January 25 Order included an additional \$550.00, it stands to reason that this additional amount was rent for the month of January. I therefore dismiss the claim for loss of rent for January.

As for the claim for loss of income for February, I find that the landlords have met the burden of proving the first 3 parts of the test outlined above. The tenant was obligated to not only vacate the rental unit, but to leave it reasonably clean pursuant to section 37 of the Act. I find that leaving his belongings in the unit did not meet his obligation to leave the unit reasonably clean. I find that the landlords suffered a loss as a result of his failure and the value is established by the rent that was set at the outset of the tenancy. However, I find that the landlords did not mitigate their losses as they are required to do under section 7(2) of the Act. The landlords presented no evidence that they attempted to re-rent the unit and as of the date of the hearing, no one had occupied the unit in the 2 years following the end of the tenancy. I find that the landlords have failed to meet the 4<sup>th</sup> part of the aforementioned test and therefore I dismiss the claim for February’s loss of income.

I find it more likely than not that the tenant caused the damage to the sink. I have arrived at this conclusion because the landlords used the unit for just one weekend whereas the tenant occupied it for a number of months and there is no indication that there was any damage to the unit whatsoever at the time the tenant began his occupancy. The tenant was obligated under section 37 to leave the unit undamaged except for reasonable wear and tear and I find that the scratch to the sink goes beyond what may be characterized as reasonable wear and tear. I am satisfied that the landlords suffered a loss and I accept the value of that loss. However, I find that the landlords are not entitled to recover the cost of replacing the entire sink. It is apparent from the photograph that the damage to the sink is purely cosmetic and I find that the tenant should not be held liable for replacing the sink. I find that the landlords are entitled to a sum which reflects the diminution in value of the sink and I find that an award of \$25.00 accurately reflects the value of this loss. I award the landlords this sum.

I find it more likely than not that the tenant caused the damage to the light. I have arrived at this conclusion because I find it unlikely that if the light had indeed broken right away for some reason other than the tenant's actions, the tenant would not have reported the problem to the landlord, particularly as he was aware that the trailer was under warranty. I find that the damage to the light goes beyond what may be characterized as reasonable wear and tear, I am satisfied that the landlords suffered a loss, I accept the value of that loss as shown by the invoice to replace the light and I find there was nothing the landlords could have done to minimize their losses in this situation. I find that the landlords are entitled to recover the cost of replacing the light and I award them \$36.89.

I find that the landlords have failed to meet the first part of the 4 part test set out above. While the landlords claim that the tenant caused the carpets to be soiled, they waited for many months to clean the carpets and in that time, the bailiff and sink repairman were both in the unit and could easily have caused the soiling evidence on the carpets. The landlords could have arranged to conduct a move out condition inspection when they served on the tenant the order of possession, but for some reason they chose not to do so. Such an inspection could have proven the condition of the carpet at the end of the tenancy. Because I am not satisfied that the tenant caused the carpet to be soiled, I find that he should not be held responsible for that cost and I dismiss the claim.

As the landlords have been only partly successful in their claim, I find they should recover just one half of the filing fee and I award them \$25.00.

Conclusion

The landlords have been awarded a total of \$86.89 which represents \$25.00 for the sink, \$36.89 for the light and \$25.00 for the filing fee. I grant the landlords a monetary order under section 67 for this sum. This 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: March 13, 2015

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Residential Tenancy Branch

