



# 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 was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. A Monetary Order for damages to the unit – Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

During the Hearing the Tenant asked for an adjournment to obtain a police report. The Tenant states that she was informed that it would take up to 3 months to obtain the police report and that she made the application for the report at the beginning of March 2015. The Tenant states that she did not make this application sooner as she did not receive the Landlord’s application and evidence package until late December 2014 and that she was too busy with work in January 2015 to find the time to make the application for the police report.

The Landlord states that the application and evidence package was sent to the Tenant by registered mail on September 2, 2014. The Landlord provided the tracking number for that mail.

Section 90 of the Act provides that a document required to be served by mail is deemed to be received 5 days after it is mailed. While it may be that the Tenant did not receive the mail until December 2014, given the Landlord's registered mail evidence I find on a balance of probabilities that the Landlord served the Tenant as required under the Act and that this evidence is deemed to have been received within 5 days of the mailing of the documents. Further even if the Tenant did not obtain the application until December 2014 considering the Tenant's evidence of timing to obtain the police report I found that the Tenant had reasonably sufficient time to obtain the police report before the hearing. I therefore denied the request for an adjournment.

#### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

#### Background and Evidence

The tenancy started with the Tenant alone in July 2012 however the Tenant occupied the unit with a tenant since 2010. Rent of \$1,250 was payable monthly on the first day of the month. The Landlord holds no security or pet deposit. No move-in inspection and report was completed at the outset of the tenancy. No move-out inspection and report was completed at the end of the tenancy. The Tenant did not pay rent for June 2014. On June 3, 2014 the Landlord served the Tenant in person with a 10 day notice to end tenancy for unpaid rent with an effective date of June 13, 2014. The Tenant moved out of the unit on June 10, 2014 returning the keys to a neighbour.

The Landlord claims unpaid rent for June 2014.

The Tenant states that no rent was paid for June 2014 as things had become hostile and the police had to attend the unit when the Tenant was almost assaulted. The Tenant states that she made arrangements while the police were present at her move-out on June 10, 2014 to return the keys to the neighbour. The Landlord disputes that there was any assault or threat of assault made on the Tenant. The Landlord states

that the police attended on June 7, 2014 and prior to their attendance the Landlord saw the moving truck at the unit and thought this was great. The Landlord states that the Tenant told the Landlord that she would not return the keys and would call the police so the Landlord sat on the lawn until the police arrived. The Landlord states that the Landlord asked the police to make arrangements to return the keys and the police informed the Landlord that the keys would be returned to the neighbour on June 10, 2014.

The Landlord states that because the Tenant failed to give notice to end the tenancy and left the unit unclean and damaged the unit could not be rented for July 2014. The Landlord states that the unit was advertised on June 15, 2014 on an internet site for the same rent and occupancy for July 1, 2014 but was not filled until July 15, 2014. The Landlord states that the repairs to the unit were completed by June 21, 2104. The Landlord claims lost rental income for the period July 1 to 14, 2014 inclusive.

The Landlord provided photos of the unit and receipts and also claims as follows:

- \$252.00 plus \$75.00 for the costs to collect and store the Tenant's belongings that were left in the unit;
- \$560.00 for the cost of painting the unit. The Landlord points to a ceiling with spatters and a hole in one wall;
- \$436.80 for the cost of cleaning the unit; and
- \$625.00 for the cost to replace the carpet that the Landlord states was damaged beyond repair from stains and pet urine and feces.

The Landlord states that the Tenant left belongings behind, including baby items, so the Landlord stored them to either August or September 2014 and that the Tenant never collected them. The Tenant states that the items left behind has been left from the previous tenant and that, given the situation at move-out and the police involvement the Tenant only had four hours to move and no time to take everything.

The Landlord states that the unit had last been painted 5 years prior to the end of the tenancy and that the claim was in relation to patching, filing and touching up the paint. The Landlord states that the painter charged \$25.00 per hour and could not explain how the final sum was arrived at. The Tenant disputes that any wall damages were left by the Tenant but agrees that one wall had crayon marks.

The Tenant states that she was unable to clean the unit as she was told it was not safe to do so.

The Landlord states that the living room carpet was damaged by dog urine and feces and that the carpet was new in 2009. The Tenant states that she had asked for a replacement because the carpet was in bad shape from the previous tenancy and that the Landlord refused to replace it.

The Landlord claims for the costs of the photos and the cost of registered mail for service.

### Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the undisputed evidence that the police and the Landlord were present while the Tenant moved out of the unit and considering that the Landlord's evidence of involvement in the discussions with the police over the return of the keys, I find on a balance of probabilities that the Tenant complied with the Landlord's request to obtain the keys on June 10, 2014. Even if the move-out and police attendance occurred on

June 7, 2014, I accept that the Tenant felt threatened by the presence of the Landlord, accept that the Tenant was told not to return to the unit and could not therefore reasonably return to the unit to either clean or finish the move after the move-out with the truck. As a result, I dismiss the Landlord's claim for cleaning and removal of the items left behind. However, as the Landlord correctly had an obligation to store the Tenants belongings and considering that the Tenant made no arrangements to relieve the storage of the items, I find that the Landlord has substantiated the storage costs of **\$252.00**.

Given the lack of a move-in condition report and considering the Tenant's evidence of the state of the carpet at move-in I find that the Landlord has failed to show on a balance of probabilities that the Tenant caused the damages to the carpet and I dismiss this claim. Given the lack of a move-in considering and considering the Tenant's evidence of no damage to any wall other than the one wall with crayons, I also find that the Landlord has not substantiated that the Tenant caused the damages to walls requiring patching and filling.

Policy Guideline # 40 sets out the useful life of indoor paint at 4 years. Even if one wall had crayon marks, given the Landlord's evidence that the unit had not been painted in the last 4 years, I find that the Landlord was required to have the unit painted and that the Tenant is therefore not responsible for the costs of such painting. I therefore dismiss the costs of painting the walls.

Considering that the Landlord ended the tenancy, no notice to end tenancy was required to be given by the Tenant. Given the Landlord's evidence that the repairs to the unit were completed prior to the end of June 2014, I find that the Landlord has not substantiated that the Tenant caused any loss of rental income for July 2014 and I dismiss the claim for lost rental income in July 2014.

No rent is payable after a tenancy ends. Given that the Landlord sought to end the tenancy by issuing a notice to end tenancy with an effective move-out date and given

that the Tenant acted in compliance with the Landlord's by moving out by this date, I find that the Landlord is only entitled to unpaid rent to the effective date of the notice, June 13, 2014. However accepting that the unit was not left as required I find that the Landlord has substantiated that the Tenant's failure caused a loss of rental income and that the Landlord is entitled to lost rental income from June 14 to June 21, 2014 when the cleaning and repairs were completed. The Landlord's total entitlement for June 2014 is **\$875.00** ( $1,250.00/30 \times 21$ ).

As there is no provision under the Act for a party to claim costs of the dispute proceedings other than the filing fee, I dismiss the Landlord's claim to costs for photos and mail.

As the Landlord's application had some merit I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,177.00**.

#### Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$1,177.00**. If necessary, this order may be filed in the Small Claims 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 18, 2015

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Residential Tenancy Branch

