



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for a monetary order for unpaid rent and for damage to the unit pursuant to section 67.

The tenants did not attend this hearing, although I waited until 1405 in order to enable the tenants to connect with this teleconference hearing scheduled for 1300. The landlord NP (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed she had authority to act on behalf of both landlords.

### Preliminary Issue – Service of Dispute Resolution Package

The landlord served the tenants at their places of work by registered mail. Both of these mailings were accepted by the parties' workplaces. The landlord testified that the tenants left the rental unit and left no forwarding address (despite the landlord requesting a forwarding address from the tenants). The landlord testified that the tenants were avoiding the landlord by refusing to answer the landlord's telephone calls and emails. The landlord testified that she knew where both tenants worked. The landlord testified that she used these addresses as she knew of no other place to serve the tenants.

The landlord testified that in the first two weeks of October 2014, she contacted both workplaces. The landlord confirmed with both workplaces that each tenant was still an employee of his or her respective workplace. The landlord confirmed with the tenant JP's workplace that mail sent to that address would be provided to the tenant JP. The landlord did not ask the same of the tenant SM's work. The landlord testified that the tenant SM provides her work contact information in her email signature. The landlord

provided me with the most recent email the landlord received from the tenant SM. That email was sent 27 September 2014 and contained the work address in the email footer.

On 17 October 2014, the landlords sent the dispute resolution packages (including all evidence before me) to the tenants' work addresses by registered mail. The landlord provided me with a tracking number that showed someone (initials LB) at the tenant JP's work address signed for the package on 24 October 2014. The tracking information for the tenant SM's package shows a signature for receipt of the package on 22 October 2014.

Service of the dispute resolution package in an application such as the landlords' must be carried out in accordance with section 89 of the Act:

- 89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a) by leaving a copy with the person;...
  - (c) by sending a copy by registered mail to the address at which the person resides...;
  - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;...

The landlords have not complied with the subsection 89(1) by sending the dispute resolution packages to the tenants' workplaces; however, paragraph 71(2)(c) allows me to order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

The landlord called both workplaces shortly before sending the packages to confirm that the parties still worked at each respective location. An employee of the tenant JP's workplace confirmed to the landlord that mail sent to the work address would be provided to the tenant. The tenant SM held out the work address in her email as her contact information as recently as three weeks before her package was sent. Based on the evidence provided by the landlord, I find, on a balance of probabilities, that the tenants would have received the registered mailings sent to their respective workplaces. As such, I order that the dispute resolution package is sufficiently served for the purposes of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

This tenancy began 1 September 2013. The parties entered into a written tenancy agreement dated 9 August 2013. Monthly rent of \$2,450.00 was due on the first of the month. The landlord testified that the landlords continue to hold the tenants' security deposit in the amount of \$1,225.00, which was collected in August 2013. The tenancy ended 30 September 2013.

The landlord testified that the tenants were having difficulties paying their rent in the months preceding the end of the tenancy. On 2 September 2014, the landlord sent an email to the tenant SM inquiring as to the payment of September's rent. In reply to this email, the tenant SM informed the landlord that the tenants did not yet have September's rent. On 4 September 2014, the landlord again inquired as to the payment of September's Rent. On 4 September 2014, the tenant SM emailed the landlord to inform her that the tenants were still unable to pay September's rent.

The landlord testified that she has not received any payment of September's rent.

On 2 September 2014, the tenant SM provided notice to end the tenancy by email effective 30 September 2014. The landlord testified that the tenants were very cooperative in making arrangements for prospective tenants to view the rental unit. On 11 September 2014, the landlord entered into a new tenancy agreement with the new tenant for a tenancy beginning 1 October 2014.

On 11 September 2014, the landlord emailed the tenant SM to schedule the condition move-out inspection report for noon on 30 September 2014. This email was not answered. On 27 September 2014 the landlord emailed the tenant SM again to schedule the condition move-out inspection report for noon on 30 September 2014. On 27 September 2014, the tenant SM confirmed by email that the condition move-out inspection would occur at noon "on Tuesday". 30 September 2014 was a Tuesday.

The landlord testified that at noon on 30 September 2014 her agent attended at the rental unit to conduct the condition move-out inspection. The landlord testified that the agent found the keys and garage remote on the kitchen counter and the rental unit full of rubbish, including furniture and a fish tank with live fish. The tenants did not meet with the agent at the appointed time to conduct the condition move-out inspection.

The new tenant had arranged to do a condition move-in inspection at one o'clock on 30 September 2014. The landlord testified that the new tenant was shocked to find the rental unit in that condition. The new tenant arranged for his friends to attend at the rental unit to move the tenants' possessions into the driveway.

The landlord testified that she tried calling both tenants but neither tenant would answer their phones. On 30 September 2014, the landlord sent an email to the tenants about the condition of the rental unit and as to the retrieval of the tenants' belongings, but did not receive any reply.

The landlord testified that she was stunned by the condition in which the tenants left the rental unit. The landlord testified that she expected that two hours of touch up cleaning would be required for the next tenants, but did not expect the rental unit to be left in the state it was. The landlord had arranged in advance for the agent to spend only two or three hours cleaning the rental unit.

The landlords provided me with four photographs of the debris removed from the inside of the rental unit. The drive way of the rental unit is full and piled high. The landlord testified that it took 1.25 truckloads to remove all the debris.

The landlord testified that she had to arrange for extensive cleaning and debris removal. The landlord testified that the agent provides cleaning services to the landlord at an hourly rate of \$30.00. The landlord testified that the agent (and her partner) spent seven hours cleaning the rental unit. The landlord provided an electronic payment transfer, dated 2 October 2014, that shows a transfer in the amount of \$210.00.

The landlord provided me with a receipt from a commercial recycling and disposal company. That receipt is dated 1 October 2014. The receipt is in the amount of \$1,044.75. The landlord testified that the invoice was this amount because the services had to be arranged last minute without any notice. Furthermore, the landlord submitted that the removal had to be done quickly as the new tenants were set to begin occupation of the rental unit. The landlord submitted that this cost represented the reasonable costs of removing this debris.

The landlord provided me with a receipt from a commercial cleaning company. That receipt is dated 1 October 2014. The invoice is in the amount of \$540.40. The landlord testified that two cleaners spent 5.5 hours working on the rental unit. The landlord testified that this invoice was more expensive than her preferred cleaner (who was unavailable) because the services had to be arranged at the last minute. Furthermore, the landlord submitted that the cleaning had to be done quickly as the new tenants were set to begin occupation of the rental unit. The landlord submitted that this cost is reasonable.

### Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenants vacated the rental unit as of 30 September 2014. There is no evidence that indicates that the tenants were entitled to deduct amounts from rent. The landlord testified that the tenants did not pay rent as owed on 1 September 2014 or at any point after that date. I found the landlord to be forthright in providing her testimony. Her answers were consistent. Furthermore, the landlord was frank in providing her evidence and made admissions adverse to her own interests in order to provide truthful testimony. As well, the tenant SM admits that the tenants failed to pay their rent as late as 4 September 2014. I find, on a balance of probabilities, that the tenants failed to pay their rent as due on 1 September 2014 or at any point thereafter. The landlords have proven their entitlement to September's rent pursuant to section 26 of the Act.

Subsection 32(2) of the Act requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. *Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard...

The landlord provided sworn and uncontested testimony that the tenants left the rental unit in a chaotic state: The landlord testified that the rental unit was dirty and that there were the tenants' belongings through the rental unit. The landlords provided receipts for their costs and photographic evidence of the amount of debris that the tenants left in the rental unit. The landlords provided me with contemporaneous documentation of

complaints made to the tenants on the move-out date. On the basis of this evidence, I find that the tenants failed to leave the rental unit in a condition that complied with subsection 32(2) of the Act.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

I find that the landlords mitigated their losses by having the work done quickly to avoid losing the new tenants and all of October's rent (the landlord testified that the new tenant was entitled to reduced rent for October because of the rental unit's condition). I accept the landlord's submissions that the costs of debris removal and cleaning were reasonable given that the cleaning had to be performed quickly and without notice. I find that the landlords have proven their entitlement to their costs of debris removal and cleaning.

The landlord testified that the landlords continue to hold the tenants' \$1,225.00 security deposit, plus interest, paid on 9 August 2013. Over that period, no interest is payable. Although the landlords' application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlords to retain the security deposit in partial satisfaction of the monetary award.

### Conclusion

I issue a monetary order in the landlords' favour in the amount of \$3,020.15 under the following terms:

Item	Amount
Unpaid September Rent	\$2,450.00
Debris Removal	1,044.75
Cleaning	210.00
Commercial Cleaning	540.40
Offset Security Deposit Amount	-1,225.00
<b>Total Monetary Order</b>	<b>\$3,020.15</b>

The landlords are provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, 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 subsection 9.1(1) of the Act.

Dated: May 27, 2015

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Residential Tenancy Branch

