



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The landlords' application sets out that the landlords claim a total monetary order in the amount of \$854.71:

| Item                               | Amount          |
|------------------------------------|-----------------|
| July Rental Loss                   | \$650.00        |
| Supplies Costs                     | 83.91           |
| Carpet Cleaner Rental              | 30.80           |
| Labour                             | 90.00           |
| <b>Total Monetary Order Sought</b> | <b>\$854.71</b> |

I accept that, despite not checking the appropriate box, the landlords sought a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67. I find that this claim is sufficiently set out for the purposes of paragraph 59(2)(b) of the Act so that the tenants were able to respond to the claim against them.

Both landlords attended the hearing. The tenant MK (the tenant) attended the hearing and confirmed that he had authority to act on behalf of both tenants. All parties present were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord KD left the hearing before its conclusion as KD had another meeting to attend. I informed KD that the hearing would continue in her absence.

Prior Hearing

This tenancy was the subject of an earlier hearing. In that hearing the tenants applied for a monetary order for return of their security deposit as well as compensation pursuant to subsection 38(6) of the Act.

The result of the hearing was a monetary order in the amount of \$700.00 in the tenants' favour. That order is a final disposition of that matter by this Branch subject to the landlords' right of review in a court of competent jurisdiction. As that prior order is final, nothing in this decision disturbs that award.

The parties indicated that there is a hearing 17 June 2015 in the Provincial Court to determine the amount payable. The landlord KD indicated that, including costs and court filing fees, the total liability is approximately \$902. I explained to the parties that the two proceedings were separate and that I would not interfere with the 17 June 2015 proceeding in any way.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for damage and losses arising out of this tenancy? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, 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.

The landlords seek a total monetary order in the amount of \$854.71:

| <b>Item</b>                        | <b>Amount</b>   |
|------------------------------------|-----------------|
| July Rental Loss                   | \$650.00        |
| Replacement Drain                  | 22.38           |
| Replacement Toilet Paper Dispenser | 13.42           |
| Replacement Towel Holder           | 19.01           |
| Replacement Faucet                 | 29.10           |
| Carpet Cleaner Rental              | 30.80           |
| Labour                             | 90.00           |
| <b>Total Monetary Order Sought</b> | <b>\$854.71</b> |

This tenancy began 15 May 2012. Monthly rent of \$650.00 was payable on the first. The landlords did not complete condition move-in/out inspection reports with the tenants. The tenants vacated the rental unit 30 June 2014.

On 21 June 2014, the tenants provided verbal notice of their intent to vacate the rental unit "as soon as possible". The tenant confirmed that the agreement was to leave "as soon as possible" on cross examination. There is disagreement between the parties as to the content of this conversation. The tenant testified that, at some point after the 21 June 2014 conversation, he went to work and a coworker happened to know of a rental unit that was available for 1 July 2014. The landlord KD testified that at this time the landlord AD asked about the tenants' "30 days' notice". The landlord KD testified that the tenant JK said that the tenants did not have to provide this notice because of the landlords' alleged refusal to allow the tenants their religious practices.

The landlords submit that there was no mutual end to tenancy agreed to either in writing or orally. The landlord AD testified that he did not receive any written complaints from the tenants regarding the tenancy. The tenant submits that the landlords agreed to allow the tenants to vacate the rental unit without providing notice pursuant to section 45 of the Act.

The tenant testified that on 30 June 2014 he asked for the return of the tenants' security deposit. The tenant testified that the landlord KD refused to return the deposit because of the lack of the tenants' notice.

The landlord KD testified that she posted advertisements for the rental unit. The landlord KD testified that they secured new tenants for the rental unit for 1 August 2014.

The landlord AD testified that the drain in the bathroom sink was leaking. The landlord AD testified that the tenant had placed a container underneath the sink to catch the dripping water. The tenant testified that he informed the landlords of this leak and that the landlord AD knew of the problem. The tenant testified that he did not cause this damage. The tenant submitted that the damage was the result of wear and tear.

The landlord AD testified that plastic portion of the toilet paper holder was missing. The tenant testified that the toilet paper holder was in the rental unit when the tenants vacated the rental unit.

The landlord AD testified that the towel rack was broken and detached from the wall. The landlord testified that the towel rack was there when the landlords purchased the

residential property in 2005. The tenant testified that the drywall anchors for the towel rack had become loose and that the rack would fall off the wall. The tenant testified that he eventually just left the rack off the wall. The tenant testified that he placed the towel rack back on the wall at the end of the tenancy. The tenants provided a photograph taken in the bathroom at the end of the tenancy. In that photograph, the towel rack is visible.

The landlord AD testified that the sink faucet in the kitchen was dripping from the joint. The landlord AD submitted that if the problem was wear and tear then the tenants would have reported the issue during the tenancy. The landlord AD testified that he replaced this faucet during the course of the tenancy. The tenant testified that the landlord AD was aware of the issues regarding the leak in the kitchen sink and that he had tried to fix it unsuccessfully. The tenant submitted that the leak in the kitchen sink was the result of wear and tear.

The landlord testified that he could not recall the last time that the rental unit was painted. The landlord AD testified that he did some touch up work on the paint before the tenants moved into the rental unit. The landlord AD testified that the tenants painted the walls with a paint that did not match the base colour. The tenant testified that he did not paint the walls in the rental unit. The landlords provided me with a photograph of scratches in the wall. The landlord AD testified that he had to patch these scratches.

The landlord testified that the carpets were washed before the tenants began occupying the rental unit. The tenant admitted that he did not wash the carpet, but testified that the carpet was in the same condition as when the tenants began occupying the rental unit. The tenant testified that they vacuumed the carpets before vacating the rental unit.

The landlord AD has charged for nine hours of labour at an hourly rate of \$15.00. The landlord estimated that one hour of the nine hours was spent cleaning the carpet.

### Analysis

Pursuant to paragraph 44(1)(c) of the Act, an agreement to mutually end the tenancy must be in writing. The tenants and landlords did not enter into a mutual agreement in writing.

In any event, and notwithstanding the tenants' failure to obtain a mutual end to tenancy in writing, I find that there was no agreement to mutually end the tenancy as a material term of that agreement, that is the date the tenancy would end, was uncertain. At most,

the conversation on 21 June 2014 resulted in an agreement to agree, which is unenforceable.

Pursuant to subparagraph 44(1)(a)(i) a tenancy can end subject to tenant's notice pursuant to section 45. Subsection 45(4) sets out that a notice under section 45 must comply with the form and content set out in section 52. Section 52 sets out, among other things, that a notice to end tenancy must be in writing. The tenants did not provide notice in writing.

Because of the tenants' failure to secure a mutual end to tenancy and the tenants' failure to provide written notice in accordance with section 45 of the Act, the tenants did not provide proper notice to end the tenancy. As such, the tenants have breached 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.

As a result of the tenants' breach the landlords submit that they suffered a rental loss for July. The landlords provided evidence that they were able to secure a new tenancy beginning 1 August 2014. The tenants provided at most nine days of notice of their intent to vacate the rental unit. Furthermore, the term of the notice, that is "as soon as possible" is vague, which makes finding a new tenant difficult. The landlords testified that they posted various ads about the rental unit's ability. I find that the landlords mitigated their losses. I find that the landlords are entitled to recover the rental loss from the tenants in the amount of \$650.00.

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains. Subsection 32(4) of the Act provides that the tenant is not responsible for making repairs for reasonable wear and tear.

The landlords did not complete a condition move in or move out inspection report. By failing to complete these reports the landlords have denied themselves the best evidence of the condition of the rental unit. This is not fatal to the landlords' claim but does place the landlords in a difficult position of showing the condition of the rental unit at the beginning of the tenancy.

The landlord AD provided testimony regarding the damage to the rental unit and subsequent repairs. The landlord AD testified that the damage was caused by the acts of the tenants. The tenant denies that the damage was the result of wear and tear and denies that some of the damage occurred.

The landlord testified that the drain under the bathroom sink was leaking. The landlord AD testified that the faucet in the kitchen was leaking. The landlords did not testify to any traumatic injury that would cause the leak. The landlord AD submits that the sinks did not leak when the tenancy began and if the leaks were caused by wear and tear then the tenants would have told the landlords. The tenant testified that the tenants did report the leaks. I do not find whether or not the leaks were reported is material in determining whether or not the damage was the result of wear and tear and do not make any finding as to whether or not the leaks were previously discussed between the parties. On the basis that there is no evidence of a mechanism of injury that would indicate anything other than a cause of wear and tear, I find that the leaks are in the nature of wear and tear. As the damage was caused by wear and tear, the landlords are not entitled to recover the costs of this repair or the labour associated with this repair.

The landlord AD testified that the toilet paper holder was missing a piece. The tenant testified that the toilet paper holder was intact at the end of the tenancy. There is no corroborating evidence for either version of events for any of the claimed amounts. As there is no corroborating evidence, I am forced to make a finding of credibility. I find the tenant's evidence was consistent and straightforward: The tenant made admissions against his own interest when the truth required him to do so. It appeared to me that the landlords were attempting to inflate their claim in order to reduce their net liability with respect to the 17 June 2017 hearing. In particular, the landlords' insistence that the leaks were the tenants' fault and not the result of wear and tear was strained. On this basis, I find that the tenant's evidence is more credible than the landlord AD's evidence. On the basis of this credibility finding, I prefer the tenant's version of events and find that the toilet paper holder was intact at the end of the tenancy. The landlords have failed to show that they are entitled to recover the costs of repairing the toilet paper holder.

The landlord AD testified that the towel rack was damaged by the tenants. The tenant testified that the towel rack was loose when the tenants moved into the rental unit and will fall out from the wall. The tenant testified that eventually the tenants stopped using the towel rack and left it detached. On the same basis of the credibility finding made above, I prefer the tenant's version of events and find that the towel rack was loose when the tenants began occupying the rental unit and that its condition continued to deteriorate as a result of wear and tear. As the damage was pre-existing and exacerbated by wear and tear, the landlords are not entitled to compensation for the towel rack replacement.

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. *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. ...

Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

This tenancy lasted for approximately two years. In accordance with section 37 of the Act and Policy Guideline 1, this means that the tenant was responsible for shampooing the carpets. The tenant admits that the tenants did not shampoo the carpets. As the tenants failed to clean the carpets the landlords are entitled to their costs of cleaning the carpet, \$30.80. I accept the landlord AD's estimate that he spent one hour cleaning the carpet and award him the value of his labour, \$15.00.

### Conclusion

I issue a monetary order in the landlords' favour in the amount of \$745.80 under the following terms:

| Item                        | Amount          |
|-----------------------------|-----------------|
| July Rental Loss            | \$650.00        |
| Carpet Cleaner Rental       | 30.80           |
| Labour                      | 15.00           |
| Recover Filing Fee          | 50.00           |
| <b>Total Monetary Order</b> | <b>\$745.80</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: June 05, 2015

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Residential Tenancy Branch



