



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MNR, MNSD, MNDC, FF, O

### Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72; and
- other unspecified remedies.

The tenants did not attend this hearing, although I waited until 2:15 p.m. in order to enable them to connect with this teleconference hearing scheduled for 2:00 p.m. The landlord's agent (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. She gave sworn oral testimony and written evidence that the landlord sent copies of the landlord's dispute resolution hearing package, including the Notice of Hearing and the landlord's original application for dispute resolution, as well as written evidence to the tenants at addresses they provided to the landlord by registered mail on December 19, 2014. The mailing addresses for Tenants VP and SS were provided by the tenants' representative at the joint move in condition inspection on November 30, 2014. The mailing address for the other tenant, Tenant ST remained constant as this tenant did not reside on the premises, although co-signing the Residential Tenancy Agreement (the Agreement). The landlord provided copies of the Canada Post Customer Receipt to confirm the above registered mailings. In accordance with sections 88, 89(1) and 90 of the *Act*, I find that the tenants were deemed served with the landlord's original dispute resolution hearing package and written evidence on December 24, 2014, the fifth day after their registered mailing.

The landlord testified that copies of the landlord's amended application for dispute resolution and additional written evidence were sent to the tenants by regular mail in January 2015.

Section 88 of the *Act* permits written evidence to be served by regular mail, and as such I am satisfied that the tenants were served with the landlord's written evidence in accordance with the *Act*.

Section 89(1) of the *Act* does not permit service of amended applications for dispute resolution by regular mail. As such, I advised the landlord that I could not consider the landlord's amendment of the amount of the original application for dispute resolution from the original \$7,176.14 to \$8,184.14. This additional amount sought the recovery of the cost of replacing the fridge and stove in the rental unit, which the landlord maintained was the responsibility of the tenants. As the tenants have not been properly served with the landlord's application to include the cost of the fridge and stove, this matter is not before me for the purposes of this hearing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord and the three parties identified as Respondents in this application signed the Agreement on August 28, 2014 and September 5, 2014. The Agreement allowed the tenants to commence occupancy on September 1, 2014 for a period of one year. Monthly rent according to the terms of this one-year fixed term tenancy was set at \$2,400.00, payable on the first of each month. The landlord continues to hold the tenants' \$1,200.00 security deposit paid on September 5, 2014. All three parties who signed the Agreement as Tenants are jointly and severally liable for any responsibilities that result from that Agreement.

On November 8, 2014, the landlord's representatives posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door. This witnessed 10 Day Notice identified \$2,400.00 in rent owing for November 2014. After receiving the 10 Day Notice, the tenants vacated the rental unit on November 30, 2014, the same date as the joint move-out condition inspection. The landlord entered into written evidence copies of the reports of the September 6, 2014 joint move-in condition inspection and the joint move-out condition inspection.

The landlord's original application for dispute resolution, the matter properly before me, sought a monetary award of \$7,176.14 for the following items listed in the landlord's original application for dispute resolution:

Item	Amount
Unpaid November 2014 Rent	\$2,400.00
Unpaid December 2014 Rent	2,400.00
Late Fees for November & December 2014	50.00
NSF Fees for November & December 2014	50.00
Early Termination of Tenancy (Liquidated	1,200.00

Damages)	
Cleaning	375.00
Carpet Cleaning	315.00
Repairs	386.14
<b>Total Monetary Order Requested</b>	<b>\$7,176.14</b>

The landlord also applied for the recovery of the \$100.00 filing fee.

The landlord entered into written evidence a tenant rent ledger, noting that the tenants' rent cheques for November and December 2014, were both returned as N.S.F. The landlord testified that the rental unit was not re-rented until March 1, 2015, at which time new tenants took occupancy for the same \$2,400.00 monthly rent as was being paid by the tenants. The landlord also entered into written evidence copies of the Agreement, which included the provisions at Sections 3.1 and 3.2. In these Sections, the parties agreed that the tenants were responsible for a payment of \$1,200.00 in liquidated damages in the event that the tenants were in breach of their Agreement or the *Act*. The landlord also provided receipts to document the expenditures required for cleaning, carpet cleaning and repairs, all of which occurred shortly after this tenancy ended.

Although this matter was not properly before me due to the lack of service of the amended application to the tenants, the landlord testified that the tenants were responsible for replacing the old fridge and stove that were in the rental unit when they took occupancy of the rental unit. She said that the tenants discarded the old fridge and stove, but did not leave the used replacement fridge and stove the tenants obtained in this rental unit when they ended the tenancy.

#### Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the August 31, 2015 date specified in that Agreement after having failed to pay monthly rent in accordance with that Agreement. As such, the landlord is entitled to compensation for losses incurred as a result of the tenants' failure to comply with the terms of their Agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent for November or December 2014. Given that the tenants did not surrender vacant possession of the rental unit to the landlord until November 30, 2014, I find that the tenants are responsible for unpaid rent of \$2,400.00 for November 2014, and the landlord's loss of \$2,400.00 in rent for December 2014. I also find that there is undisputed evidence that the landlord is entitled to recover late fees of \$25.00 for each of these months, as well as the \$25.00 NSF charge for the cheques that were non-negotiable for these months.

Section 3.1 of the Agreement reads in part as follows:

*...The Liquidated Damages is an agreed pre-estimate of the Landlord's administrative costs of advertising and re-renting the Premises as a result of the Early Termination. Payment of Liquidated Damages does not preclude the Landlord from exercising any further right to recovering other damages from the Tenant...*

Based on the undisputed sworn testimony of the landlord and the landlord's written evidence, I find that the landlord's claim for \$1,200.00 in liquidated damages is allowed as per Section 3.1 and 3.2 of the Agreement. I find that this charge is reasonable given the amount of monthly rent commanded by the rental unit and the time of year when this tenancy ended.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

After comparing the detailed notes in the joint move-in and joint move-out condition inspection reports, I find that the landlord has provided undisputed written evidence to support her sworn testimony that considerable cleaning, carpet cleaning and repairs were necessary at the end of this short tenancy. I allow each of the landlord's claims for cleaning, carpet cleaning and repairs, claims that were adequately described and supported by the receipts entered into written evidence by the landlord.

I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the \$100.00 filing fee from the tenants.

### Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, losses and damage arising out of this tenancy, as well as the filing fee, and to retain the security deposit:

Item	Amount
Unpaid November 2014 Rent	\$2,400.00
Unpaid December 2014 Rent	2,400.00
Late Fees for November & December 2014	50.00
NSF Fees for November & December 2014	50.00
Liquidated Damages	1,200.00

Cleaning	375.00
Carpet Cleaning	315.00
Repairs	386.14
Less Security Deposit	-1,200.00
Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$6,076.14</b>

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 24, 2015

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Residential Tenancy Branch

