



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with a landlord's application for compensation for loss of rent, carpet cleaning and advertising costs; and, authorization to retain the security deposit. The hearing was originally scheduled for June 23, 2015 and on that date only the landlord appeared. The landlord described how he served the tenants with his Application for Dispute Resolution on October 31, 2014 but the landlord acknowledged he had not served the tenants with his evidence and written submission. At that hearing the landlord requested an adjournment so that he may locate and serve the tenants with his written submissions and evidence package. I noted that the landlord had prepared a well written submission; however, I had difficulty communicating with the landlord orally. As such, the adjournment was granted and I issued an interim decision which included orders for the landlord with respect to serving the tenants with his evidence and bringing an interpreter to the reconvened hearing, as provided in the interim decision.

At the reconvened hearings, the landlord and the male tenant appeared, along with their interpreters. Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord submitted that he was able to determine the tenants' current address of residence and sent his hearing packages to each tenant at that address via registered mail. The male tenant confirmed that he picked up both registered mail packages and that he was representing both himself and his wife, the co-tenant. The male tenant also confirmed that he was aware of the landlord's monetary claims against them and was prepared to respond to the claims during the reconvened hearing. The tenants had provided a written submission to the Branch prior to the reconvened hearing; however, it was not served upon the landlord. The parties were informed that the tenant would be provided the opportunity to provide his position orally during the hearing as I could not consider documents not served upon the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover loss of rent from the tenants, carpet cleaning costs and advertising costs, as claimed?
2. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

The parties provided the following undisputed evidence concerning the tenancy. The one year fixed term tenancy commenced on September 1, 2014 and was set to expire on August 31, 2015. The tenants paid a security deposit of \$775.00 and were required to pay rent of \$1,550.00 on the 1<sup>st</sup> day of every month. The last month the tenants paid rent was October 2014 and the tenants vacated the rental unit on October 31, 2014.

Below, I have summarized the landlord's claims against the tenants and the tenant's responses.

**Loss of rent - \$7,750.00**

The landlord submitted that the tenants violated their fixed term tenancy agreement by ending the tenancy before the expiry date and did not give a valid notice to end their tenancy. The landlord immediately took steps to advertise the rental unit by way of two different internet sites, placing a "for rent" sign in the front yard, and paying for advertising in the newspaper starting December 23, 2014. Despite his advertising efforts there were not many showings and the rental unit was not re-rented until April 1, 2015. The landlord submitted that he advertised the unit for the same rental amount of \$1,550.00 and that the incoming tenants agreed to pay this amount. The landlord submitted that the time it took to find replacement tenants was attributable to a poor rental market at that time of year.

The tenant submitted that he was permitted to end the tenancy under the Act as the landlord failed to adequately respond to their complaints regarding bugs and mould in the unit.

It was undisputed that the tenants had mailed a written notice to the landlord on October 27, 2014. The notice was provided for my reference by the landlord. I read parts of the notice to the tenant to confirm that it was the same document the tenants had given to the landlord. He confirmed that it was the same.

The notice has a reference line of "Notice to Vacate" and indicates the reason for giving the notice is as follows:

Due to bugs, insects and Mold everywhere in the house and you failed to treat. We have no option except to end this tenancy as we feel it is unsafe to reside here any longer. As such we are writing to give you our written notice to vacate the property at [address of property] which we currently rent from yourself. Please accept this written notice in accordance with the tenancy agreement as my intention to vacate the property on or before 31<sup>st</sup> October 2014.

[Reproduced as written except address removed]

The parties confirmed that no other written notice was given to the landlord by the tenants prior to the above described notice.

It was undisputed that on September 18, 2015 the tenants orally complained to the landlord about bugs or fleas in the rental unit and the landlord immediately responded by spraying a chemical in the rental unit. The tenants complained of bugs or fleas in the unit again in October 2014 and the landlord attended the rental unit on October 24, 2014 to spray the house again.

The tenant was of the position that the chemical the landlord used was unknown and smelled badly. The tenant submitted that they were concerned that the spray was unhealthy and unsafe for them and their children. The landlord provided the name of the spray he used orally during the hearing and in his written submissions.

It was undisputed that on October 25, 2014 the tenants orally complained to the landlord of mold or mildew spots in the rental unit. The landlord attended the property on October 27, 2014 to respond to the complaint. The landlord submitted that there were a few spots of mould on the carpet of the master bedroom that were likely caused by the tenants hanging clothes to dry on a rod they had installed in the bedroom. The landlord commented that the dryer is coin operated and costs \$1 per load. The tenant stated that the clothes hanging in the bedroom had been dried and ironed when they were hung on the rod and that the rod was used because there was insufficient wardrobe space.

The landlord submitted that he also wanted to lift the carpeting to see whether mould was underneath the carpeting but the tenants did not permit him to do so. The tenant acknowledged that they refused the landlord's request to lift the carpets as they had company over and the landlord was acting aggressively, to the point the tenants' children were scared. The landlord denied acting in such a manner.

The landlord submitted that after the tenancy ended he lifted the carpeting and determined there was no mould under the carpets and that it was limited to the surface of the carpet. The landlord provided photographs of the top side of the carpet and after the carpet was peeled back to expose the underneath and under-pad to demonstrate his position.

The tenant submitted that the house had a poor heating system that provided insufficient heat which is why mould formed. The tenant submitted that the basement also had mould. The landlord denied these allegations to be true.

### **Advertising - \$147.91**

The landlord seeks to recover the costs to advertise the rental unit in the newspaper as a result of the tenants ending the fixed term early. The landlord provided evidence to demonstrate he advertised in the newspaper and that he incurred the cost that he is claiming against the tenants

The tenant was not agreeable to paying for advertising as he was of the position the tenancy was legally ended pursuant to the Act for the reasons given above.

### **Carpet cleaning – \$152.36**

The landlord submitted that the carpets had to be cleaned to ensure the mildew in the carpets was removed. The landlord was of the position that since the tenants were responsible for causing the formation of mould on the carpets the tenants are responsible for carpet cleaning. The landlord provided a copy of the carpet cleaning receipt as evidence.

The tenant was not agreeable to paying for carpet cleaning as he was of the position the tenants did not cause the mould to form on the carpets.

### **Filing fee and Security Deposit**

The landlord seeks to recover the \$100.00 filing fee paid for this Application and authorization to retain the security deposit in partial satisfaction of the losses claimed.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Based upon consideration of everything presented to me, I provide the following findings and reasons.

### **Loss of Rent -- \$7,750.00**

A tenant who enters into a fixed term tenancy agreement, as in this case, the tenant is bound to fulfill the terms of tenancy for the period of the fixed term. If a tenant ends the tenancy earlier than the expiry date the landlord may pursue the tenant for loss of rent during the remainder of the fixed term provided the landlord takes reasonable steps to mitigate the loss of rent.

The Act does provide a mechanism for tenants to end a fixed term early in specific circumstances. It is provided for in section 45(3) which reads:

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

[my emphasis added]

In the case before me, it was undisputed that the only written notice given to the landlord by the tenants was the notice dated October 27, 2014. As such, the landlord was entitled to a reasonable amount of time after receiving the October 27, 2014 notice to rectify any material breach before the tenants could end the tenancy.

One of the reasons for ending the tenancy, as provided by the tenant in the notice and during the hearing, is because of mould in the unit. I was presented disputed testimony as to whether the mould in the carpet was caused by the tenants' actions or insufficient heat in the house and I have considered which of the most likely cause for the mould.

I was not provided evidence to suggest the tenants had ever complained to the landlord about insufficient heat and I note that the written notice of October 27, 2014 does not mention insufficient heat. Nevertheless, the landlord had attended the property to respond to their complaint of mould and the tenants rebuffed the landlord's attempts to investigate on October 27, 2014. While I appreciate it may not have been a good time for carpet removal at that time in particular, the tenants' next course of action was to send the landlord their written notice rather than reschedule a day to lift the carpet.

Upon review of the photographs taken by the landlord once the carpet was lifted I note that the mouldy spot on top of the carpeting is not mouldy underneath but there is an apparent water stain on the backside of the carpet. I also note that there does not appear to be any staining or mould on the under-pad. As such, it appears to me that the carpeting became wet from the top and not from underneath.

Considering the tenants were hanging clothes in the bedroom, the landlord attempted to investigate the cause of the mould on the carpet in the bedroom and was rebuffed by the tenants, water appears to have been dropped or dripped onto the carpet from the top; and, the tenants had not complained of insufficient heat to the landlord, I find I prefer the landlord's submissions that the mould was likely caused by the tenants hanging wet clothes in the bedroom and not because of insufficient heat.

The tenants had also complained of bugs or fleas to the landlord twice and the landlord responded to spray the unit with an insecticide. The tenants' notice of October 27, 2014 does not indicate anybody became sick from the chemical spray or were otherwise concerned for their health or safety. Rather, the tenants merely state in the notice that the landlord failed to treat the problem which does not appear to be the case.

In light of the above, I find the tenants did not satisfy me that the landlord breached a material term of the tenancy agreement and I also find that they certainly did not give the landlord sufficient time to respond to their written notice they sent to him on October 27, 2014 before ending the tenancy on October 31, 2014. Therefore, I find the tenants did not end the tenancy in a manner that complies with section 45(3) of the Act.

Having found the tenants did not end the tenancy in a manner that complies with section 45(3) of the Act I find the tenants breached their fixed term tenancy agreement and the Act by ending the tenancy early. As such, I find the landlord is entitled to recover loss of rent from the tenants for the remainder of the fixed term provided he took reasonable steps to mitigate loss of rent.

The landlord provided a copy of the tenancy agreement entered into with the incoming tenants that shows the next tenancy started April 1, 2015 for the same monthly rent of \$1,500.00. The landlord also provided print-outs of advertisements he placed on the internet and several receipts showing that he advertised in the newspaper starting December 23, 2014 and continuing through the months of January 2015, February and March 2015. Therefore, I find the landlord has substantiated his position that he suffered a loss of \$7,750.00 despite reasonable efforts to advertise and re-rent the unit.

In consideration all of the above, I grant the landlord's request to recover \$7,750.00 from the tenants for loss of rent due to their breach of the Act, regulations or tenancy agreement and I award this amount to the landlord.

**Advertising – \$147.91**

Where a tenant breaches their fixed term tenancy agreement, the landlord may pursue the tenant for costs to advertise the unit as such costs were incurred earlier and more frequently than anticipated as a result of the tenant's violation. The landlord provided copies of the advertising invoices to establish the amount claimed is the cost he incurred. Therefore, I grant the landlord's request to recover \$147.91 from the tenants for advertising costs and I award this amount to the landlord.

**Carpet cleaning – \$152.36**

The Act requires that a tenant leave a rental unit reasonably clean and undamaged at the end of the tenancy. For the reasons given previously in this decision, I have found the tenants likely responsible for the growth of mould or mildew on the carpeting in the rental unit due to their actions or neglect. I find it reasonable that the landlord would have the carpets steam cleaned to rectify the mouldy carpet situation and I find the landlord entitled to recover the cost for doing so from the tenants. The landlord provided a copy of the carpet cleaning receipt to demonstrate the cost he incurred to have the carpets cleaned. Therefore, I grant the landlord's request to recover carpet cleaning costs of \$152.36 from the tenants and I award that amount to the landlord.

**Filing fee, security deposit and Monetary Order**

As the landlord was successful in this Application, I award the landlord recovery of the \$100.00 filing fee he paid for this Application.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the amounts awarded to the landlord in this decision.

In keeping with the findings and awards made above, I provide the landlord with a Monetary Order calculated as follows:

Loss of Rent	\$7,750.00
Advertising costs	147.91
Carpet cleaning	152.36
Filing fee	100.00
Less: security deposit	<u>(775.00)</u>
Monetary Order	\$7,375.27

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

### Conclusion

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$7,375.27 to serve and enforce.

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: August 28, 2015

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Residential Tenancy Branch



