



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenant – MNDC, O

For the landlords – MNR, MND, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and other issues. The landlords applied for a Monetary Order for unpaid rent or utilities; for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlords to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the *Act*?
- Are the landlords entitled to a Monetary Order for unpaid rent or utilities?

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep all or part of the security deposit?

### Background and Evidence

The parties agreed that this tenancy started on December 29, 2013 and ended on December 17, 2014. Rent for this unit was \$750.00 per month due on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$375.00 on January 01, 2014. Originally the tenant's father and uncle were the tenants of this unit; however, when the tenant's uncle moved out the tenant and his girlfriend moved into the unit with the tenant's father. The tenant's father moved out in June, 2014 and the tenant assumed the tenancy.

### **The tenant's application**

The tenant testified that he agreed to vacate the rental unit and asked RI if the landlords could help the tenant with his first month's rent at his new unit he was going to share with his father. RI thought he might be able to help as the tenant could not afford to move out and the landlords wanted the tenant to move from their unit. RI offered to pay one month's rent and two months of storage fees for the tenant's belongings as he could not take his belongings to his father's unit.

The tenant testified that his share of the new rent was \$600.00. The tenant testified that the landlord did not help the tenant pay this and the tenant seeks to recover \$600.00 plus \$150.00 for moving costs and fuel costs. The tenant later withdraw his claim for moving and fuel costs as the tenant agreed the landlords actually moved the tenant's belongings.

The tenant testified that the landlords did pay the first month's storage fees but did not pay any further months. The tenant could not afford to keep his belongings in storage so moved them to his Aunt's house. The tenant seeks to recover \$300.00 for two months storage fees which the landlord had agreed to pay.

The landlords disputed the tenant's claims. RI testified that he did not promise to pay the tenants first month's rent. RI testified the tenants asked the landlords to pay his first month's rent and RI offered to speak to his brother who is the executor of the property but did inform the tenant that it was not likely that they would be willing to do this as the tenant owed rent to the

landlords. RI testified that he did not promise to pay for two months storage fees. The landlords did however pay one month's storage fees to help the tenant out.

CR testified that they helped the tenant load his belongings onto the landlords' trailer and then took it to the storage place for the tenant and unloaded it all for the tenant. The landlords then paid the first month's storage fee for the tenant for one storage unit. Later they helped the tenant remove his belongings from storage and took it to his Aunt's home.

### **The landlord's application**

CR testified that the tenant has failed to pay rent for October, November and December, 2014. The tenant informed the landlords that he did not have to pay rent and could continue to live in the unit. The tenant was issued with a 10 Day Notice to End Tenancy on October 15, 2014 this had an effective date of October 26, 2014 but the landlords did not apply for an Order of Possession at that time. The landlords seek to recover the amount of \$2,250.00 in unpaid rent.

CR testified that the tenant vacated the rental unit on December 17, 2014. The unit was left in a filthy condition which rendered the unit un-rentable for the month of January, 2015, There was dog feces on the carpet in several rooms, cat litter and urine on other carpets, dead mice and mouse droppings throughout the unity, dirty dishes both in and out of the unit, the toilet was in a disgusting condition, the stove was very dirty, there were 12 bags of garbage left in the back shed and another 10 to 12 bags of garbage were removed from the unit plus a further quantity of recycling, The landlords removed the tenant's belongings into storage and then had to clean the entire unit, the carpets and make minor repairs. This work took until the third week of January, 2015 to complete. The landlords were not able to re-rent the unit until February, 2015. Due to this the landlords seek to recover lost rental income for January, 2015 of \$750.00.

RI testified that they did all the work on the house to make it suitable for rental and had to remove all the tenant's belongings into storage. The tenant did help load his belongings onto the trailer but the landlords had to unload everything at the storage facility on their own. The landlords seek to recover \$127.50 for their labour and \$300.00 to load, document, unload the tenant's belongings and then clean the unit. The landlords seek to recover the cost for carpet cleaning shampoo. The landlords used their own carpet cleaning machine and had to clean the

living room carpet four times. The landlords seek to recover the cost for the carpet cleaning supplies of \$80.00. No receipt or invoice has been provided in evidence.

RI testified that they had agreed to help the tenant out by paying the first month's storage unit fee from January 23 to February 23 of \$87.15. The landlords had claimed this amount on their application but withdrew this section of the claim at the hearing. RI testified that they also had to pay for another storage unit from February 04, to February 28 of \$98.34 as the tenant had enough belongings to require a second storage unit. The landlords seek to recover this amount from the tenant and have provided a copy of the invoice in documentary evidence.

CR testified that as they had to record all the tenants' belongings they stored, they purchased a memory stick to record the information. The landlords seek to recover the cost of this memory stick of \$14.55. The receipt for this item has been included in documentary evidence.

CR testified that the tenant left a vehicle on the property. The landlords advised the tenant to remove his vehicle or it would be towed. The tenant made arrangements with the landlords to tow his vehicle to a friend's house. The tenant did not have any money so the landlords paid the towing bill of \$50.00. The landlords seek to recover this amount from the tenant. The landlords have provided a copy of the invoice in documentary evidence.

CR testified that the new tenants were due to move into the unit on February 01, 2015. They had given up their unit and expected to be able to take possession of this unit. However, they were unable to move in on February 01, 2015 as the landlords were still removing the tenant's belongings and cleaning the unit. They were not able to take possession of the unit until February 12, 2015. The new tenants were able to stay somewhere else; however, the landlords had to pay to store their belongings at a cost of \$55.13. The landlords seek to recover this amount from the tenant but have not provided an invoice in documentary evidence.

The landlords seek an Order permitting them to keep the security deposit in partial satisfaction of their claim. The landlords also seek to recover their filing fee of \$50.00.

The tenant agreed that he did not pay rent for October, November and December, 2014. The tenant testified that he had spoken to the Residential Tenancy Branch about repairs required in

the rental unit concerning floor damage, black mould and a wasp infestation and withheld his rent because of these repairs. The tenant testified that he was also in dispute with the Ministry of Children's development as he was trying to get his children returned to him but they would not return his children due to the condition of the unit. The tenant testified that his father was also very ill and these family pressures meant the tenant did not pay his rent.

The tenant disputed the landlords' claim for a loss of rent for January, 2015 and testified that the kitchen floor was scrubbed and the carpets were vacuumed at the end of the tenancy. The unit only got dirty again in the moving out process. The tenant agreed that his dog did defecate on the carpets as the tenant had to leave the dog in the unit while the tenant went to stay at his father's home for a week when his father became ill. The tenant agreed the house was in a disgusting condition. The tenant testified that he was going to return to clean the house but was advised by someone at the Residential Tenancy Branch not to have any further communication with the landlord.

The tenant agreed that the landlords did help the tenant move his belongings and provided the trailer. The tenant also agreed that he did not help the landlords unload the trailer at the storage unit and the landlords also helped the tenant remove his belongings from storage into his Aunts house. The tenant disputed the landlords' claim for a second storage unit and testified he did not agree the landlords could put his stuff in a second storage unit.

The tenant disputed the landlords' claim for a memory stick and for towing fees. The tenant testified that he had sold his vehicle to a friend. The landlords called to say they were going to tow his vehicle and the tenant asked the landlords to tow it to his friend's house but told the landlords he could not afford to pay for this.

The tenant agreed he did not clean the carpets at the end of the tenancy and does not dispute the landlords' claim for \$80.00 for carpet cleaning supplies. The tenant disputed the landlords' claim to store the new tenants' belongings and testified that this is not his responsibility.

The tenant agreed the landlord can keep the security deposit of \$375.00

#### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties.

**The tenant's application**

With regard to the tenant's application to recover \$750.00 for one month's rent and moving fees; the tenant has the burden of proof in this matter to show that he had an agreement with the landlords that they would pay his first month's rent at his new residence. In the absence of any written agreement it is one person's word against that of the other and the burden of proof is not met. Consequently, the tenant's application to recover \$750.00 is dismissed.

With regard to the tenant's application to recover two months storage fees; the landlords agreed that they paid the first months storage fees for the tenant's belongings even though they are not required to do so under the *Act*. Without corroborating evidence to show the landlords agreed to pay a further months storage then I find the tenant has not met the burden of proof in this matter and the tenant's claim to recover \$300.00 is dismissed.

**The landlords' application**

With regard to the landlords' application to recover unpaid rent; I refer the parties to s. 26 of the *Act* which states:

*26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

There is insufficient evidence to show the tenant had a right under the *Act* to deduct any amount of rent and I am satisfied with the undisputed evidence before me that the tenant failed to pay rent for October, November and December, 2014. I therefore find the landlords are entitled to recover this unpaid rent to an amount of **\$2,250.00**.

With regards to the landlords' claim to recover a loss of rent for January, 2015; the landlords have shown that the tenant did not leave the rental unit reasonable clean at the end of the tenancy. The landlords had to pack the tenant's belongings and remove them into storage, the landlords had to clean the unit and carpets and make some minor repairs. The landlords also had to remove the tenant's vehicle left at the property. I am satisfied with the evidence before

me that the tenant did not leave the rental unit in a condition that allowed the landlords to advertise it and show it to prospective tenants during the month of January, 2015. I find therefore the landlords have established a claim to recover a loss of rent for January, 2015 of **\$750.00**.

With regard to the landlords' claim for labour costs to remove the tenants belongings and to clean the unit; I am satisfied that the landlords had to undertake this work and I find their claim to be reasonable. I therefore uphold the landlords' claim to recover **\$127.50** and **\$300.00**. I further find the tenant has not disputed the landlords' claim for carpet cleaning supplies; I therefore uphold the landlords' claim to recover **\$80.00**.

With regard to the landlords' revised claim for storage fees. If a tenant does not remove his entire belongings on the last day of the tenancy the landlord may treat these belongings as abandoned. The landlord is required to record what belongings are left at the property and to store them for a minimum period of 60 days if the belongings have a value of over \$500.00. The landlords are entitled to recover any storage fees from the tenant pursuant to the Residential Tenancy Regulations part five. In this matter the landlords testified that they did agree to pay the first month's storage fees and have withdrawn that section of their claim. I find therefore that despite the tenant's claim that he did not ask the landlords to store his additional belongings in a second storage unit the fact remains that the landlords had to use a second storage unit and the tenant is responsible for any costs incurred. Consequently, I uphold the landlords' claim to recover the fee of **\$98.34** from the tenant.

With regard to the landlords' claim to recover the cost of the memory stick to record the tenant's belongings moved into storage. The landlords are required to keep an inventory of the tenant's stored belongings; however, there is no provision under the *Act* which states this must be done on a memory stick and could have equally been recorded on paper. I am not therefore prepared to allow the landlords to recover this cost from the tenant as it was the landlords' choose to use this method to record information. This section of the landlords' claim is therefore dismissed.

With regard to the landlords' claim to recover \$50.00 for towing the tenant's vehicle from the property; a tenant is required to remove all his belongings at the end of the tenancy including any vehicles. The tenant testified that he informed the landlords that he could not pay for towing;

however, the fact remains that the vehicle was the tenant's responsibility and therefore if the tenant did not remove it after warnings that it would be towed then the tenant is responsible for the costs incurred. The landlords have not provided a receipt showing the actual costs incurred to tow the tenant's vehicle; however, I find the amount claimed of \$50.00 to be a reasonable charge. I therefore uphold the landlords' claim to recover **\$50.00**.

With regard to the landlords' claim to recover storage fees for the incoming tenants' belongings; the landlords testified that they had to store the new tenants' belongings as the rental unit was not ready for them to take possession on February 01, 2015. The landlords have the burden of proof in this matter and must show that the new tenants' belongings were stored off site and the actual costs incurred by the landlords for this storage. The landlords have insufficient evidence to show that they had to pay \$55.13 to store the incoming tenants' belongings and therefore the landlords have not met the burden of proof in this matter. This section of the landlords' claim is therefore dismissed.

With regards to the landlords' application to keep the security deposit; the tenant agreed at the hearing that the landlords may keep the security deposit of **\$375.00**. I therefore Order the landlords to retain this amount pursuant to s. 38(4)(b) of the *Act*.

As the landlords' claim has merit I find the landlords are entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*. The landlords have been issued with a Monetary Order has follows:

Unpaid rent for three months	\$2,250.00
Loss of rent for January	\$750.00
Labour and cleaning costs	\$427.50
Carpet cleaning	\$80.00
Storage costs	\$98.34
Towing fees	\$50.00
<b>Subtotal</b>	<b>\$3,655.84</b>
Plus filing fee	\$50.00
Less security deposit	(-\$375.00)
<b>Total amount due to the landlords</b>	<b>\$3,330.84</b>



Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

For the reasons set out above, I grant the landlords a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$3,330.84**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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 06, 2015

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Residential Tenancy Branch

