



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            MNR MNSD MNDC FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The landlord and the tenant participated in the teleconference hearing.

At the outset of the hearing, the tenant confirmed that he had received the landlord's application and evidence. The tenant did not submit any documentary evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

### Background and Evidence

The tenants began occupying the rental unit on September 1, 2014, in a fixed-term tenancy that ended on November 30, 2014. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$600.00. Rent in the amount of \$1,200.00 was payable in advance on the first day of each month.

The tenants and the landlord then entered into a subsequent tenancy that commenced December 1, 2014. The subsequent agreement indicates that this tenancy was to be for a fixed term ending May 31, 2015. However, the rent section of the agreement also contains a handwritten clause that states, "tenants may give one month's notice and move without penalty."

The tenants put a stop-payment on their rent cheque for March 2015, and on March 5, 2015 the landlord served the tenants with a notice to end tenancy for unpaid rent. The tenants vacated the rental unit on March 15, 2015.

### *Landlord's Claim*

The landlord stated that when they arrived at the rental unit on March 15, 2015 to do the move-out inspection, the male tenant became aggressive and hostile so the landlord called the police.

The landlord then left the property and asked the tenants to leave the keys on the counter when they were finished. The landlord stated that when they returned to the rental unit it was not cleaned and there was garbage inside and outside. The landlord stated that the tenants refused to participate in a move-out inspection and they would not provide a forwarding address.

The landlord has claimed compensation as follows:

- 1) \$3,600.00 for unpaid rent and lost revenue for March, April and May 2015;
- 2) \$400.00 for garbage hauling;
- 3) \$640.00 for 32 hours of cleaning, at \$20.00 per hour;
- 4) \$59.97 for three blinds;
- 5) \$120.07 for paint and supplies to repair damaged walls;
- 6) \$22.02 for cleaning supplies and flea treatment; and
- 7) \$60.00 for disposal of garbage and wood.

In support of their claim, the landlord submitted evidence including:

- 41 photographs of the rental unit showing dirty conditions and excessive amounts of garbage and personal items left behind;
- a condition inspection report with the landlord and tenant's signatures for the move-in inspection on September 1, 2014; and
- invoices and receipts for cleaning, repairs and garbage removal.

### *Tenant's Response*

The tenant stated that he was not present at the move-in inspection and he therefore did not sign the condition inspection report. The tenant stated that in February 2015 the landlord informed the tenant that the downstairs occupants were complaining about noise, and the landlord told the tenant it would be better if the tenant just left.

The tenant stated that he had to put a stop-payment on the March 2015 rent cheque because he did not have the funds. The tenant stated that the house was in the same condition at the end of the tenancy as it was at the beginning. The tenant acknowledged that he left some things behind, but he denied doing any damage. The tenant stated that when the landlord came to the rental unit to do the move-out inspection the tenant offered to stay and clean until midnight or 3:00 a.m. but "the landlord basically told me to hit the road."

At the end of the hearing the tenant stated, despite his earlier testimony, that he did not receive a copy of the condition inspection report in his evidence package.

### Analysis

Upon consideration of the evidence and on a balance of probabilities, I find as follows.

### *Condition Inspection Report*

In regard to the move-in inspection, I find that the while the male tenant did not participate in that inspection, it is clear that the female tenant did participate and sign the report. At the outset of the hearing the tenant confirmed that he had received all of the landlord's evidence, which included the move-in condition inspection report. The tenant also stated that his concern was that he had not participated in the move-in inspection. I therefore do not accept as true the tenant's statement that he was not served with the condition inspection report.

I accept the landlord's testimony that they were unable to carry out a move-out inspection with the tenant on March 15, 2015, as previously agreed upon.

### *Unpaid Rent and Lost Revenue*

There is a significant discrepancy in the second tenancy agreement as to whether the tenancy was to be for a fixed term or on a month-to-month basis. The agreement indicates that it is for a fixed term ending on May 31, 2015, but it also contains a provision that the tenants may end the tenancy early by giving one month's notice without penalty. That provision implies that the tenant has the same rights regarding notice as in a month-to-month tenancy, not a fixed-term tenancy.

When a term of an agreement contains an ambiguity, the legal doctrine of *contra proferentem* provides that the preferred meaning should be the one that works against the interests of the drafter of the agreement. In this case, I find that the meaning that the tenancy was a month-to-month tenancy is the meaning that works against the landlord's claim for lost revenue for the remainder of the fixed term. I therefore find that the tenancy was month-to-month.

The tenants did not pay rent for March 2015, and when they vacated on March 15, 2015 they left behind a dirty unit that required cleaning and repairs. I find it reasonable that the landlord would not have been able to re-rent the unit for the balance of March 2015 and I grant the landlord \$1,200.00 for the full month of March 2015. The landlord did not provide evidence that they took reasonable steps to re-rent the unit as soon as possible, and I therefore find that they are not entitled to lost revenue for April or May 2015.

### *Cleaning and Repairs*

I am satisfied, based on the landlord's evidence, particularly the photographs of the excessive amount of items left in the rental unit, the damaged items and the unkempt yard, that the landlord is entitled to the remainder of their claim, except for the claim for 32 hours of cleaning. The landlord did not provide a breakdown of the cleaning. However, I accept that some cleaning would have been required, and I therefore grant the landlord \$300.00 for 15 hours of cleaning at \$20.00 per hour.

### *Filing Fee*

As the landlord's application was partially successful, they are entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

The landlord is entitled to \$2,312.06. I order that the landlord retain the security deposit of \$600.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,712.06. This order may be filed in the Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 5, 2015

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Residential Tenancy Branch

