



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MND, MNR, MNSD, FF

### Introduction

This hearing dealt with a claim by the landlord for a monetary order and an order authorizing them to retain the security deposit in partial satisfaction of the claim. Despite having been served with the application for dispute resolution and notice of hearing sent via registered mail to the tenant at the forwarding address she provided to the landlord, the tenant did not participate in the conference call hearing. I found that the tenant had been properly served with notice of the hearing and of the claim against her and the hearing proceeded in her absence. My decision is based on the landlord's undisputed evidence and testimony.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The landlord's undisputed testimony is as follows. The tenancy began on April 1, 2015 at which time the tenant paid a \$450.00 security deposit. The tenant was obligated to pay rent of \$900.00 per month in advance on the first day of each month. The tenancy ended on May 23, 2015.

The landlord seeks to recover \$900.00 in lost income for the month of June. She testified that on May 21 she received the tenant's written notice that she would be ending the tenancy on the weekend of May 25. The landlord saw the tenant moving her belongings on May 23. The landlord testified that she attempted to re-rent the unit by posting advertisements online as well as posting a sign outside the building, but the unit remained un-rented for several months.

The landlord seeks to recover \$684.44 as the estimated cost to re-key the building, the rental unit and the tenant's mailbox. She testified that the tenant failed to return any keys at the end of the tenancy and stated that she re-keyed the unit and the mailbox at a cost of \$95.95 but wishes to also re-key the building.

The landlord seeks to recover \$1,167.60 as the cost of replacing the carpet and linoleum at the end of the tenancy. They testified that the carpet and linoleum were new at the beginning of the tenancy and provided photographs showing that at the end of the tenancy, there was gum and

other soiled areas on the carpet and what appear to be burn marks on the linoleum. They testified that they did not replace the carpet and linoleum as they did not have monies available to do that, but cleaned the flooring as well as they could before re-renting the unit.

The landlord seeks to recover \$254.00 as the cost of removing items left by the tenant at the end of the tenancy. They entered into evidence photographs showing that the tenant left a number of items of furniture in the unit as well as an estimate for \$346.00 from the company they hired to remove the items. Although the landlord did not provide a copy of the invoice, they testified that the actual cost of removal was less than the estimate and they paid just \$254.00.

The landlord also seeks to recover the \$50.00 filing fee paid to bring their application.

### Analysis

The *Residential Tenancy Act* (the "Act") establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;
3. Proof of the value of that loss; and (where applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

I find that the tenant was obligated under the Act to provide no less than one full month's notice to end her tenancy. Section 53 of the Act provides that when a notice to end a tenancy sets a date for the end of the tenancy which does not comply with the Act, the incorrect date is automatically changed to the first date which complies with the Act. I therefore find that section 53 operated to change the effective date of the tenant's notice to June 30, 2015. I find that the landlord attempted to minimize their losses by advertising the unit. I find that the landlord has established all of the elements of the test outlined above and I award the landlord \$900.00.

Section 37(2)(b) of the Act requires the tenant to return to the landlord all of the keys at the end of the tenancy. Although the landlord wishes to re-key the building, because they have not incurred that expense yet, I find that they are entitled to recover just the monies they are out-of-pocket. I find that they suffered a loss of \$95.95 and that they could not have minimized that loss in any way. I find that the landlord has established all the elements of the aforementioned test and I award the landlord \$95.95.

Section 37(2)(a) of the Act provides that tenants are obligated to leave the rental unit in reasonably clean and undamaged condition, except for reasonable wear and tear. The tenant resided in the unit for less than 2 months and I find that the damage to the carpet and linoleum goes beyond what may be characterized as reasonable wear and tear. I find that the tenant breached her obligation under the Act. The landlord has not replaced the carpet and linoleum and I find that the damage is primarily cosmetic and the flooring can still be used for its intended

purpose, although its life has been reduced. The carpet and linoleum had a useful life of 10 years and as a rough estimate, I find that the tenant deprived the landlord of 1 year of their useful life. I find that the landlord has proven a compensable loss in that the value of the flooring is depreciated and I find that the landlord is entitled to recover the value of that loss. I award the landlord \$116.76 which represents one year of depreciation.

I find that by leaving items in the rental unit, the tenant breached section 37(2)(a) as the unit cannot be said to be reasonably clean when her belongings are still therein. I find that the landlord suffered a compensable loss of \$254.00 and I award them that sum.

As the landlord has been substantially successful in their claim, I find they should recover the filing fee paid to bring their application and I award them \$50.00 for a total award of \$1,416.71. I order the landlord to retain the \$450.00 security deposit in partial satisfaction of the claim and I grant them a monetary order under section 67 for the balance of \$966.71. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

#### Conclusion

The landlord will retain the security deposit and is granted a monetary order for \$966.71.

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: November 06, 2015

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Residential Tenancy Branch

