



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

### **Dispute Codes:**

MNDC, MNSD, MNR, MND, FF

### **Introduction**

This Review Hearing was convened in response to a successful application for Review Consideration by the tenant granting them a Review Hearing based on sufficient evidence the Director's Decision or Order was obtained by fraud. Only the landlord attended the original hearing. Both parties attended the Review Hearing and were given opportunity to present relevant evidence and make relevant submissions respecting the matters identified in the Review Consideration Decision as the basis for this hearing.

The Review Consideration Decision states as follows in respect to the parameter of the Review Hearing.

*It should be noted that there is a discrepancy in the decision on the amount of the security and pet deposits. In page 1 of the decision the security and pet deposits are indicated as \$862.50 each and on page 5 of the decision the security and pet deposits are indicated as \$682.50 each. The tenant may file for a correction or clarification of these amounts from the original Arbitrator if the tenants' review consideration is unsuccessful. If a new hearing is granted the Arbitrator can address this matter.*

The required correction will be addressed. In addition, the Review Consideration Decision further guides this Review Hearing as follows.

*There is no evidence provided in the original file or the review consideration application that the tenants agreed to purchase the appliances or received a rent reduction. There is an email between the landlord and the property manager and it mentions an email from the tenant agreeing to the rent reduction as compensation for replacing the washer and dryer but the tenants' email to this*

*effect is not in the evidence. As a result of the landlord's testimony and the email to the property manager the landlord was awarded \$1,200.00.*

*The tenant disputes this information as fraudulent. The tenant indicates the rent was \$1,725.00 in the tenancy agreement and there is no agreement in the tenancy agreement regarding replacement of the washer and dryer. The tenant indicates in the review consideration application that they paid the full rent of \$1,725.00. To support the tenants claim that the landlord was fraudulent about the washer and dryer replacement and reduced rent as compensation, the tenant submitted their copy of the move out condition inspection report that is different than the report the landlord submitted for the hearing. The landlord's move out condition inspection report has "new washer dryer removed and dirt behind wall and floor" on it and the report is not signed by the tenants. The tenants' move out condition inspection report has washer and dryer marked as "OK" and the report is signed by the tenant. There is no mention of new washer and dryer on the Tenants' report. Given that the reports are not the same and the difference is about the washer and dryer which was part of the monetary order; I find the tenants has established grounds that the report may have been altered after the fact and that this may have had an influence on the original Arbitrators decision.*

Effectively, this hearing heard evidence from the parties solely respecting **the landlord's claim of an agreement for the tenant to purchase new laundry appliances for \$1200.00 and a corresponding reduction of the rent over the 2 year fixed term of the tenancy agreement.** The original Decision and Order is hereby varied as relevant, and the balances of findings of the original Decision are confirmed.

### **Issues to be decided**

Is the landlord entitled to a monetary order for unpaid rent, loss of income cost of cleaning, management fees to re-rent the unit and for the recovery of the filing fee?

### **Background and Evidence**

The landlord testified that the tenancy started on December 01, 2013 for a fixed term of two years ending November 30, 2015. The monthly rent was \$1,725.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$862.50 and a pet deposit of \$862.50.

A tenancy agreement was filed into evidence. The landlord stated that the tenancy agreement contained an addendum. However a copy of the addendum was not filed into evidence. I gave the landlord the opportunity to fax the addendum because he stated that it contained a clause that was related to his claim for costs of re-renting the unit. The landlord faxed a hand written note from the tenant dated March 17, 2015 instead of the addendum to the tenancy agreement.

The landlord stated that prior to signing the tenancy agreement, the tenant requested new appliances. The tenant agreed to pay for the appliances and for the cost of disposal of the old appliances in the total amount of \$1,200.00, in exchange for a reduced rent. The landlord agreed to reduce the rent to \$1,725.00 in order for the tenant to recover the \$1,200.00 over the period of two years. The landlord purportedly filed proof of this arrangement by way of emails between the two parties. The landlord testified that despite this arrangement, the tenant took the new appliances with her when she moved out.

However, this Review Hearing, nor the original hearing, had benefit of emails between the tenant and landlord respecting appliances. The landlord *did* provide an e-mail to their property manager dated October 29, 2013, and an additional e-mail from their property manager to the landlord dated December 25, 2015, the latter of which was not sent to the tenant. None the less, the landlord was permitted to read both e-mails into evidence – with which the tenant disagreed as fact.

The tenant testified in response the tenancy agreement was entered on November 19, 2013 and the parties were not known to each other – having no communication about the rental unit - until several days before signing the tenancy agreement. The tenant testified they do not recall an agreement with the applicant landlord respecting the tenant purchase new appliances and never did purchase appliances; and, that the agreed amount for the rent was always as stated in the tenancy agreement. The tenant argued the October 2013 e-mail ends with “Cc Ruth”, however it was not sent to the tenant, nor does the e-mail indicate the tenant as a destined recipient. The tenant argued the e-mail is fabricated and fraudulent. The landlord did not agree with nor disputed the tenant’s testimony in response.

The landlord stated that prior to the start of tenancy, based on the tenant’s offer to rent the unit for a fixed term of two years, he also agreed to allow the tenant to change the carpet at his cost and he reimbursed the tenant with a cheque in the amount of \$2,000.00. The landlord stated that since the tenant ended the tenancy prior to the two year term, he is claiming the return of a prorated amount of \$666.66.

The landlord stated that in October 2014, the tenant informed him that she had found a house that she would like to purchase and that if the sale materialized, she would be moving out sometime in the new year, but was not sure exactly when. The tenant sent a follow up email to the landlord on December 02, 2014 informing him that her plans had fallen through and that she would not be moving out prior to December 01, 2015, which is the end date of the fixed term tenancy.

The landlord stated that on March 17, 2015, the tenant informed the landlord in writing that she was moving out on March 28, 2015. On March 25, 2015, the landlord informed the tenant that because she was ending the tenancy prior to the end date of the fixed term, she would be responsible for any loss of income and for the cost of re-renting the unit. The tenant responded the next day and agreed to pay one half month's rent for ending the tenancy prior to the end date of the fixed term.

The landlord filed proof of having incurred a cost of \$1,097.25 in management fees to re-rent the unit.

The landlord stated that the tenant left the unit in a messy condition. A copy of the move in/move out inspection report and photographs were filed into evidence. The landlord also filed a receipt in the amount of \$685.00 for the cost of cleaning the rental unit. This receipt states that the cleaning services included the inside as well as the outside of the unit.

The landlord stated that he advertised the unit and had showings but despite his efforts to re-rent it, he was unable to find a tenant for April 2015. A new tenant was found for May 01, 2015. The landlord is claiming the loss of income for the month of April 2015.

The landlord is claiming the following:

1.	Loss of rental increase for second year of term @ 2.5%	\$345.04
2.	Management fee to re-rent unit	\$1,097.25
3.	Improvements made due to extended term of lease	\$666.66
4.	Loss of income for April 2015	\$1,725.00
5.	Agreement to purchase new appliances	\$1,200.00
6.	Cost of cleaning	\$685.00
7.	Filing fee	\$100.00
	<b>Total</b>	<b>\$5,818.95</b>

## **Analysis**

Based on the sworn testimony of the landlord and in the absence of evidence to the contrary, I find as follows:

1. Loss of rental increase for second year of term @ 2.5% - \$345.04

The landlord explains in his written submission that had the tenant not entered into a two year fixed term, he would have applied a 2.50% increase to rent after the end of the first year. Based on this, the landlord is claiming \$345.04 as compensation for his loss.

Section 42 of the *Residential Tenancy Act* addresses the timing of a notice of rent increase as permitted by legislation. A rent increase does not automatically come into effect at the end of one year of tenancy and does not apply to fixed term tenancies. Based on the above, I find that I must dismiss the landlord's claim for loss of income due to missed rent increase.

2. Management fee to re-rent unit - \$1,097.25

The landlord stated that he had an agreement with the tenant regarding the cost of re-renting the unit if the tenancy ended prior to the end date of the fixed term. The landlord stated that this clause was set out in the addendum to the tenancy agreement. The addendum was not filed into evidence and despite giving the landlord an opportunity to fax it in after the hearing; he did not provide a copy of the addendum.

In the absence of a signed agreement regarding the tenant's responsibility to bear the cost of re-renting the unit, I dismiss the landlord's claim for \$1,097.25.

3. Improvements made due to extended term of lease - \$ 666.66

The landlord agreed to reimburse the tenant in the amount of \$2,000.00 for a carpet change as selected by the tenant. The landlord stated that he agreed to this based on the length of the term. However, there is no documented agreement that would make the tenant liable for a prorated cost if the tenancy ended prior to the fixed term. In addition the new carpet continues to increase the value of the rental unit. Therefore I find that the landlord is not entitled his claim for a prorated amount to cover the cost of the carpet.

4. Loss of income for April 2015 - \$1,725.00

Section 45(2) of the *Residential Tenancy Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) Is not earlier than one month after the date the landlord receives the notice
- (b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

In this case the tenant was in a fixed term tenancy that would end on December 01, 2015. The tenant provided notice in writing on March 17, 2015 and moved out on March 28, 2015. Since rent is due on the first of each month, I find that the tenant did not provide adequate notice. The landlord mitigated his losses by attempting to re rent the unit in a timely manner but despite his efforts was unable to find a tenant for April 2015. I find that the tenant is liable for the loss of income suffered by the landlord and accordingly, I award the landlord \$1,725.00.

5. Cost of cleaning - \$685.00

Based on the landlord's testimony, I find that the unit was left in a messy condition and required cleaning. The invoice filed by the landlord states that the cost of cleaning includes the cleaning of the outside of the unit. The tenant is not responsible for the cleaning of the outside of the unit and accordingly, I award the landlord a portion of his claim in the amount of \$350.00 which is approximately half of the cost incurred.

Based on the testimony of both parties and the e-mail correspondence filed by the landlord into evidence between them and their property manager, I find as follows:

6. Agreement to purchase new appliances - \$1,200.00

I find the landlord has not provided credible evidence, even on a balance of probabilities, supporting the parties agreed the tenant was to purchase new laundry appliances. I find correspondence on this matter was between the landlord and their agent with no evidence the tenant was ever involved in the correspondence. As a result, I do not believe an agreement respecting the landlord's claim existed, and I dismiss this portion of their claim in the amount of \$1200.00.

7. Filing fee - \$100.00

The landlord has proven most of his claim and therefore is entitled to the filing fee.

Overall the landlord has established a claim as follows. The tenant's deposits totalling \$1725.00 will be off-set from the award made herein.

1.	Loss of rental increase for second year of term @ 2.5%	\$0.00
2.	Management fee to re-rent unit	\$0.00
3.	Improvements made due to extended term of lease	\$0.00
4.	Loss of income for April 2015	\$1,725.00
5.	Agreement to purchase new appliances	\$0.00
6.	Cost of cleaning	\$350.00
7.	Filing fee	\$100.00
	<i>Subtract tenant's deposits totalling \$1725.00</i>	<i>-\$1725.00</i>
	Monetary Order to landlord	<b>\$450.00</b>

### **Conclusion**

The original **Decision** is hereby varied, and the original **Monetary Order** is set aside and of no effect.

**I Order** that the landlord retain the security deposit of \$862.50 and the pet deposit of \$862.50 in partial satisfaction of the claim and **I grant** the landlord an Order under Section 67 of the *Residential Tenancy Act* for the balance due of **\$450.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

*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: January 06, 2016

---

Residential Tenancy Branch

