



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

matter regarding VANTAGE WEST REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") made on September 11, 2015. The Landlord applied for an Order of Possession and a Monetary Order for: unpaid rent; damages to the rental unit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to keep the Tenant's security deposit; and to recover the filing fee from the Tenant.

An agent for the Landlord (the "Landlord") appeared for the hearing and provided affirmed testimony during the hearing as well as documentary and photographic evidence prior to the hearing. However, there was no appearance for the Tenant during the 24 minute duration of the hearing or any submission of written evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord testified that she served the Tenant with a copy of the Application, the Notice of Hearing documents and the evidence by registered mail on September 14, 2015. The Landlord testified that she sent the documents to the address confirmed by the Tenant as that belonging to his mother where he could receive documents to.

The Landlord provided a copy of the Canada Post tracking number and tracking history report as evidence to verify this method of service. The Landlord testified that the Canada Post website indicated the Tenant's mother had received and signed for the documents on September 17, 2015. In the absence of any evidence from the Tenant to contradict this, I find the Tenant was served the required documents for this hearing pursuant to Section 89(1) (c) of the Act.

At the start of the hearing, the Landlord confirmed that the Tenant had vacated the rental unit. Therefore, I dismissed the Landlord's Application requesting an Order of Possession.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent?
- Is the Landlord entitled to the costs claimed for damage to the rental unit and failure to return the keys?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim?

Background and Evidence

The Landlord testified that this tenancy started on December 1, 2014 for a fixed term of one year set to expire on November 30, 2015 at which point the tenancy was going to end and the Tenant was required to vacate the rental unit. However, the tenancy ended when the Tenant abandoned the rental unit at some point during the end of August 2015 without any written notice.

Rent under the written tenancy agreement was payable by the Tenant in the amount of \$1,600.00 on the first day of each month. The Tenant paid the Landlord an \$800.00 security deposit on November 30, 2014 which the Landlord still retains. The Landlord completed a move-in Condition Inspection Report (the "CIR") on December 1, 2014 and a move-out CIR (in the absence of the Tenant) on August 10, 2015, which was provided into written evidence.

The Landlord testified that after the tenancy had ended the Tenant asked the Landlord to send documents to the address that had been provided to the Landlord by the Tenant on his rental application at the start of the tenancy.

The Landlord testified the Tenant failed to pay rent on August 1, 2015 in the amount of **\$1,600.00**. The Landlord now seeks to claim this amount because the Tenant abandoned the rental unit before making this payment.

The Landlord testified the Tenant failed to return the keys for the rental unit and when she attempted to use the key code that had been provided to the Tenant to access the rental unit, it did not work because the Tenant had recoded it. As a result, the Landlord had to get the lock rekeyed at a cost of **\$109.48**. The Landlord provided a copy of the invoice relating to this cost.

The Landlord testified the Tenant failed to clean the rental unit and perform yard maintenance as required by the addendum attached to the tenancy agreement provided into evidence. The Tenant also left a large amount of garbage which had to be bagged

and removed from the rental unit. In relation to this, the Landlord claims **\$362.50** as evidenced by an invoice for a company to complete the garbage removal and yard clean up.

The Landlord testified that in an effort to mitigate loss the owners performed seven hours of clean up and charged \$25.00 per hour for a total cost of **\$175.00**. In addition the Landlord testified that the Tenant had an unauthorized pet in the rental unit, which was contrary to the agreement, which urinated and defecated in several areas. The Landlord testified that she had this cleaned at a cost of **\$300.00**. The Landlord referred to a multitude of photographs indicating the above damages.

The Landlord testified that the Tenant was not allowed to smoke in the rental unit but did. This was evidenced by the Landlord's photographic evidence showing smoking paraphernalia scattered throughout the rental unit. The Landlord testified that the Tenant had caused a burn hole in the in the master bedroom carpet and admitted to this damage during the tenancy promising to rectify it at the end of the tenancy, which it was not. The Landlord estimated the age of the carpet to be three years old. As a result, the Landlord provided an invoice from a carpet company for the replacement cost of **\$660.19**.

The Landlord removed her claim for additional cleaning costs in the amount of \$1,435.00 as referenced by item number six on the Monetary Order Worksheet. This is because this amount was provided as an estimate at the time the Application was made.

The Landlord testified that as per the written tenancy agreement, the Tenant was provided with a fully furnished rental unit. However, after the Tenant had abandoned the rental unit, the following items were missing and damaged: black leather sectional sofa; glass dining room table; dresser; and a silver mirror. The Landlord provided advertisements showing similar items on sale listed on a local second hand website. As a result, the Landlord now claims a total of **\$485.00** for the total value of these items.

### Analysis

In relation to the Tenant's forwarding address, there is no evidence before me that the Tenant provided the Landlord with a forwarding address in **writing** that would comply with the requirement stipulated under Section 38(1) of the Act.

Section 26(1) of the Act states that a tenant is required to pay rent when it is due under the tenancy agreement whether or not a landlord complies with the Act. Based on the

Landlord's undisputed testimony, I find the Tenant failed to pay rent for the month of August 2015. In addition, a landlord or tenant may not break a fixed term tenancy. Therefore, I find the Landlord is entitled to unpaid rent in the amount of **\$1,600.00**.

Section 37(2) (b) of the Act states that at the end of a tenancy, the tenant must give the landlord all the keys or other means of access that they are in possession or control of that allows the tenant access to the residential property. I accept the Landlord's oral evidence that the Tenant failed to return the keys for the punch pad door locks and also failed to provide the Landlord with the correct code so that the Landlord could access the rental unit. I am satisfied with the **\$109.48** cost for the Landlord to have the door lock rekeyed and award this amount to the Landlord.

Section 37(2) of the Act requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy. In addition, Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary.

The Tenant provided no evidence prior to the hearing. In relation to the Landlord's monetary claim for damages I rely on the following undisputed evidence of the Landlord: the oral testimony of the Landlord; the comparison information provided by the CIR; the requirement of the Tenant to maintain the gardens as provided by the tenancy agreement; the photographic evidence; and, the invoice supporting the costs. Based on the foregoing evidence, I find the Landlord has proved the costs of damages to the rental unit in the amount of **\$837.50** (362.50 + \$175.00 + \$300.00).

In relation to the damage to the carpet, I am satisfied that this was caused by the Tenant based on the evidence before me. The Landlord seeks to claim for the replacement cost of the carpet in the amount of \$660.19. In determining the amount the Landlord is to be awarded for this item, I have considered the useful life of the carpet as detailed in Policy Guideline 40 to the Act. This states that the useful life of a carpet is 10 years. The Landlord testified that the carpet was 3 years old. Therefore, I award the Landlord 70% of the cost of the invoice provided into evidence in the amount of **\$462.13**.

I also accept the Landlord's evidence that the Tenant caused damage to the items that were provided as part of the tenancy. I find the Landlord's claim for these items on the basis of the comparison data from second hand websites is appropriate. Therefore, the Landlord is awarded the amount of **\$485.00** for this portion of the monetary claim.

Based on the foregoing, I find the Landlord is entitled to \$3,494.11. As the Landlord has been successful in this matter, the Landlord is entitled to the **\$100.00** filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is **\$3,594.11**.

As the Landlord already holds the Tenant's **\$800.00** security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is awarded the outstanding balance claimed in the amount of **\$2,794.11**.

### Conclusion

The Tenant has breached the Act by not paying rent, not returning the keys, and causing damage to the rental unit. Therefore, I allow the Landlord to keep the Tenant's security deposit and grant the Landlord a Monetary Order for the remaining balance of **\$2,794.11**.

Copies of this order are attached to the Landlord's copy of this decision. This Order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) 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: March 14, 2016

---

Residential Tenancy Branch