



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was originally convened via teleconference on April 26, 2016 and was attended by two agents of the landlord and both tenants. I granted an adjournment as described in my Interim Decision dated April 26, 2016. When the hearing was reconvened on May 12, 2016 the same people attended plus the tenants' legal counsel.

On May 12, 2016 the tenant's agent submitted a letter with the tenants' position on each of the landlord's claims. However, as noted in my Interim Decision of April 26, 2016, the adjournment period was not an opportunity to submit additional evidence. Furthermore, even if I were to allow the tenants to make this submission they had not provided their submission to either the landlord or the Residential Tenancy Branch at least 7 days prior to the hearing as required under Residential Tenancy Branch Rule of Procedure 3.15. As a result, I have not considered the tenants' legal counsel submission dated May 12, 2016. I did allow both parties to provide oral submissions.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for cleaning and repairs of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on May 3, 2013 for a 1 year fixed term tenancy beginning on June 1, 2013 that converted to a month to month tenancy on June 1, 2014 for a monthly rent of \$800.00 due on the 1<sup>st</sup> of each month with a security deposit of \$400.00 paid. By the end of the tenancy the rent had increased to \$815.00.

The landlord submitted the tenants provided a written notice dated September 1, 2015 stating that they would be vacating the rental unit as of October 1, 2015. The landlord submitted they received the written notice on September 3, 2015. The landlord seeks compensation in the amount of \$815.00 for rent for the month of October 2015 due to this late notice.

The tenants submitted the landlord failed to take any steps to mitigate their losses as a result of the tenant's short notice to end the tenancy. The landlord submitted that they had advertised the availability of the rental unit in order to re-rent the unit but provided no documentary evidence to support this submission. The landlord testified they secured a new tenant on October 5, 2015 to move into the rental unit November 1, 2015.

The landlord sought compensation in their original Application for Dispute Resolution for an unpaid hydro bill in the amount of \$64.27. The parties agreed in the hearing that this bill has now been paid by the tenants. The landlord no longer seeks compensation for this part of their original claim.

The tenants agreed with the landlords' claims for carpet cleaning (\$89.25); window covering cleaning (\$60.00); remote control replacement (\$80.00); and remote control reprogramming costs (\$150.00). As such, neither party provided testimony in regard to these claims.

The landlord also sought compensation in the amount of \$120.00 for cleaning of the rental unit based on \$15 per hour for a period of 8 hours. In support of their claim the landlord has submitted several photographs of the rental unit and a copy of a Condition Inspection Report recording the condition of the rental unit at the start and end of the tenancy. I note the tenant signed the Report stating that they did not agree with the condition as it was recorded at the end of the tenancy.

According to the Condition Inspection Report the landlord documented that the floors and window coverings required cleaning in the living room, dining room, kitchen,

bedrooms, and bathroom. The Report specifically identifies that behind the fridge and stove needs to be cleaned. The receipt submitted by the landlord states that walls were washed; the bathroom floor cleaned; fridge and stove; kitchen cabinets; balcony and all light fixtures.

The tenants submitted that they believed, for the most part, the rental unit had been left reasonably cleaned and even if any cleaning was required it did not warrant 8 additional hours of cleaning. The tenants also submitted that even if the floor under the fridge and stove required cleaning the tenants should not be held responsible because they did not know if the appliances could be easily moved.

The landlord also claimed \$60.00 for paint touch ups. The landlord submitted that several rooms required touch ups from scuffs on walls and that balcony floor needed touching up due to an apparent overspray when something had been painted on the balcony.

In support of this claim the landlord relied upon the Condition Inspection Report and several photographs submitted as evidence.

The tenants submit that the landlord's claim for paint touch ups is based on damage that the tenants determined was reasonable wear and tear after a tenancy of 2 ½ years duration.

The landlord also sought \$183.75 for repairs to the carpet due to a stain. In support of this claim the landlord relied on the Condition Inspection Report; photographic evidence and quote for repair costs.

The tenants submit that they should not be held responsible for these costs as the landlord has provided no evidence that the repairs were actually made or that there was a need for repair after the carpets were cleaned on October 7, 2015.

### Analysis

As per the agreement of the tenants I accept the tenants owe the landlord \$379.25 for carpet cleaning; window covering cleaning; remote control replacement costs; and remote control reprogramming costs.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(1) stipulates that a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

From the tenant's submissions I find the tenants provided the landlord with the notice of their intent to end the tenancy on September 1, 2015. From the tenancy agreement, I find that rent was due on the 1<sup>st</sup> of each month.

As there was no evidence before me that the tenants were alleging a breach of a material term of the tenancy agreement I find that the provision by the tenants with their Notice to End Tenancy to the landlord on or after September 1, 2015 required that the earliest the tenancy could end would be October 31, 2015, pursuant to Section 45(1).

As a result, I find the tenants are obligated to pay rent to the end of October 2015 subject to the landlord's obligation to mitigate their losses. However, I accept the tenant's position that the landlord has provided no evidence of what steps the landlord took to mitigate any of the losses such as when they began to advertise the availability of the rental unit.

Section 7(1) of the *Act* states a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 7(2) states a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In the absence of any evidence to show that the landlords did take reasonable and timely steps to mitigate the potential loss of revenue for the month of October 2015, I am not satisfied the landlord has taken reasonable steps to minimize the loss, in accordance with Section 7(2) of the *Act*. Therefore, I dismiss the landlord's claim for lost revenue for the month of October 2015.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

From the landlord's documentary evidence I am not convinced that the rental unit required the extensive amount of cleaning, if any, as claimed by the landlord. The Condition Inspection Report records only the walls and floors needed cleaning in most rooms.

The invoice submitted from the landlord shows that the cleaners washed walls; cleaned the bathroom floor; fridge and stove; kitchen cabinets; balcony; and all light fixtures. I find that many of these were not noted in the Condition Inspection Report as being needed. As such, I find I cannot rely on the landlord's evidence to confirm the tenants failed to comply with their obligations under Section 37.

I dismiss the portion of the landlord's claim seeking \$120.00 for rental unit cleaning.

In regard to the landlord's claim for touch up painting, I accept the tenant's position that the painting needed was a result of reasonable wear and tear. I find that the landlord's photographic evidence does not support a need for paint with the exception of the need to paint the balcony.

In this case, I find the landlord's photographic evidence confirms that the need to paint over the existing balcony paint was due to what appeared to be overspray from a spray paint job completed on the balcony. I find the landlord is entitled to \$30.00 of the \$60.00 claimed for painting.

And finally, in regard to the carpet damage repairs I accept the tenant's position that the quote to replace the carpet was obtained prior to the cleaning of the carpets and there is no evidence submitted by the landlord to confirm that the carpets have since been repaired or that there was still a need for the repair after the carpets had been cleaned.

As such, I find the landlord has failed to establish a loss resulting from damage to the carpet in the rental unit. I therefore, dismiss the portion of the landlord's claim in the amount of \$183.75 for damage to the carpet.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$434.25** comprised of \$89.25 carpet cleaning; \$60.00 window covering cleaning; \$80.00; remote control replacement; \$150.00 remote control reprogramming; \$30.00 painting and \$25.00 of the \$50.00 fee paid by the landlord for this application as they were only partially successful in their claim.

I order the landlord may deduct the security deposit and interest held in the amount of \$400.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$34.25**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: June 6, 2016

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Residential Tenancy Branch