



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on April 12, 2016 for a Monetary Order for: unpaid rent; to keep the Tenants’ security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and, to recover the filing fee from the Tenants. The Application was amended on April 19, 2016 to include damages to the rental unit.

An agent for the company Landlord (the “Landlord”) appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Tenants during the ten minute duration of the hearing. As a result, I turned my mind to the service of the documents by the Landlord for this hearing.

The Landlord testified that she served each Tenant a copy of the Application, the amended Application, and the Notice of Hearing documents to the Tenants’ forwarding address which was provided on the move-out Condition Inspection Report by the Tenants at the end of the tenancy. This was served by registered mail on April 14 and April 19, 2016. The Landlord provided the Canada Post tracking numbers into evidence to verify this method of service, but explained that the documents had been returned as unclaimed by the Tenants.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the Tenants were both deemed to be served with the documents for this hearing pursuant to the Act. The hearing continued to hear the undisputed evidence of the Landlord as follows.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent and an insufficient funds fee?
- Is the Landlord entitled to the costs resulting from the lack of cleaning to the rental unit?
- Is the Landlord entitled to keep the Tenants' security deposit in partial satisfaction of the Landlord's monetary claim?

Background and Evidence

The Landlord testified that this tenancy started on July 15, 2011 for a fixed term of one year after which it continued on a month to month basis. Rent under the written tenancy agreement was payable by the Tenants in the amount of \$1,825.00 on the first day of each month which was eventually increased to \$2,018.00 per month by November 2014. The Tenants paid a security deposit of \$900.00 and a pet damage deposit of \$900.00 (herein referred to as the "Deposits") which the Landlord still retains.

The Landlord testified that she completed a move-in Condition Inspection Report (the "CIR") at the start of the tenancy which was provided into evidence. The Landlord testified that the Tenants provided written notice to end the tenancy on March 31, 2016. The Landlord testified that she completed a move-out CIR with the Tenants on March 31, 2016.

The Landlord pointed me to the move-out CIR which detailed that the rental unit had failed to be cleaned pursuant to the Act and that the Tenants had failed to clean the carpets as they were very dirty. The Landlord stated that the Tenants had authorized her to deduct \$200.00 from their Deposits for the cleaning and promised to provide a receipt for the carpet cleaning which they failed to do.

The Landlord testified that the cleaning was carried out after the Tenants had vacated but this only ended up costing \$70.00. However, the carpet cleaning cost \$210.00. The Landlord provided receipts for these costs.

The Landlord testified that the Tenants provided a cheque for the March 2016 rent. However, this cheque was returned to them as having insufficient funds in April 2016. The Landlord explained that this did not come to their attention due to a miscommunication by the bank who did not alert them to this issue until the Tenants had vacated the rental unit. As a result, the Landlords now seek to claim unpaid rent for March 2016 in the amount of \$2,018.00 plus a \$25.00 insufficient funds fee as provided

for by section 10 of the signed tenancy agreement. The total amount sought by the Landlord is \$2,323.00

### Analysis

I accept that this tenancy ended on March 31, 2016 and that this was the date the Landlord received the Tenants' forwarding address in writing. The Landlord made the Application on April 12, 2016. Therefore, I find that the Landlord made the Application to keep the Tenants' security deposit within the 15 day time limit stipulated by Section 38(1) of the Act.

Section 26(1) of the Act requires a tenant to pay rent under a tenancy agreement. Section 7(1) (d) of the Residential Tenancy Regulation allows a landlord to charge an administration fee up to \$25.00 for the return of a tenant's cheque by a financial institution if the tenancy agreement provides for this fee.

Based on the foregoing, I accept the Landlord's undisputed evidence that the rent payment for March 2016 rent was returned to the Landlord as unpaid and therefore, the Tenants failed to pay rent pursuant to the tenancy agreement and the Act. I also find that the Landlord is entitled to the \$25.00 fee provided for in the tenancy agreement and by the Regulation. As a result, the Landlord is awarded \$2,043.00 for this portion of the monetary claim.

Section 37(2) of the Act requires a tenant to leave a rental suite reasonably clean and undamaged at the end of a tenancy. 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 Tenants provided no evidence prior to the hearing to dispute the preponderance of evidence provided by the Landlord in respect of the carpet and cleaning costs claimed. Therefore, I rely on the undisputed testimony and documentary evidence of the Landlord to find that the Tenants failed to complete the cleaning of the rental unit and the carpets as evidenced on the move-out CIR. Therefore, the Landlord is entitled to the \$280.00 claimed for this portion of the monetary claim.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenants the \$100.00 filing fee for the cost of this Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is **\$2,423.00**.

As the Landlord already holds **\$1,800.00** in the Tenants' Deposits, 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 issued with a Monetary Order for the remaining amount of **\$623.00**. This order must be served on the Tenants and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenants fail to make payment. Copies of this order are attached to the Landlord's copy of this decision.

### Conclusion

The Tenants have breached the Act by not paying rent and failing to clean the rental unit. Therefore, the Landlord may keep the Tenants' Deposits and is granted a Monetary Order for the remaining balance in the amount of \$623.00.

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: September 07, 2016

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Residential Tenancy Branch