



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BLACK MOUNT LOGGING INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

On July 25, 2016, the Landlord submitted an Application for Dispute Resolution for a monetary order for damage to the rental unit; for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord and Tenant C.D. attended the hearing. At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Parties testified that they have exchanged the evidence I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The parties provided opposing testimony on the whether the tenancy was a fixed term or a month to month tenancy.

The Landlord testified that the tenancy was a one year fixed term tenancy to continue until July 31, 2016. The Landlord provided a copy of the tenancy agreement dated July 16, 2015. The tenancy agreement contains the names, initials, and signatures of the Tenants. The tenancy agreement was signed on July 17, 2015.

The Tenant C.D. testified that he did not sign the tenancy agreement, and that it is not his initials or signature on the agreement.

The Landlord responded by pointing out that both the Tenants' signatures within the Condition Inspection Report, completed at the time of the move in, match the Tenants' signatures and initials within the tenancy agreement.

The Tenant provided a copy of an email dated April 27, 2016 he received from the Landlord's agent. The email states that the Tenants lease is up at the end of July and provides options for renewal.

The Landlord testified that the Tenant did not respond to the offer to renew the lease and the Tenants moved out without notice on July 12, 2016.

Part of the Landlords claim for compensation is for liquidated damages due to the Tenant ending a fixed term tenancy early.

I find that the tenancy was a one year fixed term tenancy. The Landlord has provided the stronger evidence on this issue. The Landlord provided a signed tenancy agreement and the signatures of the Tenants are consistent with the signatures on a separate document. The Tenant agreed with the Landlord on all the details of the tenancy except the type of tenancy. In addition, I would expect that the Tenant would have raised the issue after receiving the email from the Landlord in April 2016 stating the end of his lease was approaching.

#### Issues to be Decided

- Is the Landlord entitled to compensation due to damage to the rental unit?
- Is the Landlord entitled to compensation for unpaid rent
- Is the Landlord entitled to liquidated damages?
- Can the Landlord retain the security deposit in partial satisfaction of his claim?
- Is the Landlord entitled to recover the cost of the filing fee

#### Background and Evidence

The parties testified that the tenancy commenced on July 16, 2015. Rent in the amount of \$1,900.00 was due on the first day of each month. The Tenants paid a security deposit of \$950.00 to the Landlord.

The Landlord is seeking compensation for the following items:

July 2016 Rent	\$1,900.00
Liquidated Damages	\$400.00
Locksmith	\$139.44
Landscaping	\$300.00
Carpet Cleaning	\$250.00
Cleaning	\$367.50

The Landlord testified that the Tenant C.D. participated in the move out inspection on July 12, 2016. The Landlord testified that at the end of the inspection the Tenant got aggressive regarding the security deposit, and the Landlord was so uncomfortable she had to ask the Tenant to leave before she could get a signature on the Condition Inspection Report.

The Tenant C.D. testified that he participated in the move out inspection, but did not sign the Condition Inspection Report. The Tenant stated that the Landlord asked him to leave because things got heated.

#### July 2016 Rent

The Landlord testified that the Tenants moved out prior to the end of the fixed term tenancy agreement date of July 31, 2016. The Landlord testified that the Tenants did not pay the rent for July 2016. The Landlord is claiming \$1,900.00 for loss of rent for the month of July 2016. The Landlord testified that the move out inspection was completed on July 12, 2016, and he was not able to rent the unit out for the remainder of July 2016.

The Tenant testified that there was no way he could afford to renew the tenancy agreement with the Landlord, at such a high increase of rent, so he notified the Landlord he was moving out.

The Tenant testified that the Landlord did not mitigate the loss because the Landlord tried to re-rent the unit at a higher rent and was unable to do so.

The Landlord testified that he re-rented the unit for September 2016 for \$2,000.00 per month.

#### Liquidated Damages

The Landlord testified that the tenancy agreement has a liquidated damages clause that requires the Tenants to pay \$400.00 as liquidated damages for the Landlord's costs of

re-renting the rental unit, if the Tenant ends the fixed term tenancy early. The Landlord provided a copy of the tenancy agreement.

In response, the Tenant testified that there was only one month remaining of the tenancy. The Tenant stated that he could see having to pay either the July 2016, rent or the liquidated damages, but not both.

#### Locksmith

The Landlord testified that the keys to the rental unit were not returned to the Landlord at the end of the tenancy. The Landlord referred to the Condition Inspection Report which supports his testimony that the keys were not returned. The Landlord is claiming the amount of \$134.94 for the cost of a locksmith to re-key the locks. The Landlord provided a receipt dated July 15, 2016.

In response, the Tenant testified that he left the keys on the counter within the rental unit on June 15, 2016. The Tenant refers to black and white photocopied photographs that were provided in response to the Landlord's claim. The photocopied photographs are black and white, dark and of poor quality.

#### Landscaping

The Landlord testified that the Tenant damaged the lawn and is responsible for the cost of the materials and labour for the repair. The Landlord testified that the Tenant asked to park his utility trailer and boat on the property. The Landlord testified that he agreed but stipulated that the Tenant must make sure that any damage to the grass be repaired at the end of the tenancy. The Landlord testified that the grass was damaged by the Tenant and the Landlord paid \$300.00 for new soil and re-seeding of the areas where the Tenant parked his trailer and boat. The Landlord provided an email receipt for the work to repair the lawn.

The Tenant did not provide a response to the Landlords claim for Landscaping.

#### Carpet Cleaning

The Landlord testified that the Tenant left the carpets unclean. The Landlord is claiming the amount of \$157.50 to have the carpet cleaned. The tenancy agreement states that the Tenant will pay for professional cleaning of the carpet at the end of the tenancy. The Landlord provided a receipt for carpet cleaning dated September 8, 2016, in the amount of \$157.50.

The Tenant testified that he had the carpets cleaned three months prior to moving out. The Tenant testified that he could fax a copy of the receipt during the hearing.

The Landlord opposed the acceptance of the Tenant's receipt during the hearing, and pointed out that the tenancy agreement requires the Tenant to clean the carpet periodically during the tenancy and at the end of the tenancy.

### Cleaning

The Landlord testified that at the end of the tenancy the Tenants left the rental unit dirty and the unit required cleaning. The Landlord testified that the floors, windows, fixture, blinds and bathroom required cleaning. The Landlord testified that it took 10.5 hours to clean the rental unit at an hourly rate of \$35.00 per hour. The Landlord submitted that the areas that required cleaning are listed in the Condition Inspection Report. The Landlord provided a receipt dated July 15, 2016, for move out cleaning at the dispute address in the amount of \$367.50.

The Tenant replied that the house was clean. The Tenant submitted that \$400.00 to clean a house this size (1150 square feet) is too much. The Tenant stated that the Landlord's cleaning receipt could have been one of her friends. The Tenant submitted that he has a photograph showing the unit was clean.

### Security Deposit

The Landlord is requesting to keep all or part of the \$950.00 security deposit in satisfaction of his claim for unpaid rent and damage.

### Analysis

Section 21 of the Residential Tenancy Regulation states:

*In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.*

I find that the parties participated in the completion of the Condition Inspection Report at the time of the move in inspection on July 27, 2015. I find that the Tenant C.D. participated in the move out inspection on July 12, 2016, but did not sign the report.

Although the Tenant did not sign the Condition Inspection Report, I find that it is evidence of the state of repair and condition of the rental unit at the time of move in, and move out.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

### July 2016 Rent

I find that the fixed term tenancy required the Tenants to pay the rent for July 2016. The Tenants failed to pay the rent for July 2016, and consequently the Tenants are responsible to pay the Landlord rent for the month of July 2016. The Landlord was not required to attempt to re-rent the unit for the remainder of July 2016. I award the Landlord \$1,900.00 for July 2016, rent.

### Liquidated Damages

The Landlords claim for liquidated damages is dismissed. The fixed term tenancy agreement ended on July 31, 2016, and required the Tenants to vacate the rental unit before July 31, 2016. The Tenants move out sometime in July 2016.

The Tenants are responsible to pay the rent for July 2016, but are not required to pay the liquidated damages. The Tenants are not responsible to pay rent for any month beyond July 31, 2016, and are not responsible for the Landlord's costs to re-rent the unit.

### Locksmith

I grant the Landlords claim for \$139.44. The Landlord provided the stronger evidence that the keys were not returned at the end of the tenancy. The Condition Inspection report supports the Landlord's testimony the no keys were returned at the end of the tenancy. I do not see any keys in the photocopied picture provided by the Tenant and I find the photocopy to be too dark to be of any probative value.

### Landscaping

The Landlord has established his claim for the cost to repair the lawn. The Landlord provided unopposed testimony that the lawn was damaged by the Tenant, and supported the testimony with the Condition Inspection Report that indicates the lawn / grass was dead and required replacement at the end of the tenancy.

I grant the Landlord \$300.00 for the cost of repairing the lawn.

### Carpet Cleaning

The Landlord has established his claim for the cost to clean the carpets. I find that the Tenancy agreement requires the Tenant to clean the carpet at the end of the tenancy. Residential Tenancy Policy Guideline #1 Landlord and Tenant Responsibility for Residential Premises states: at the end of the tenancy, tenants are responsible for cleaning the carpets after a tenancy of one year. I find that the Tenants lived in the rental unit for approximately one year.

I grant the Landlord \$157.50 for the cost of cleaning the carpets.

### Cleaning

The Tenant testified that the house was clean but did not state that he cleaned it or specify when it was cleaned. The Tenant did not raise a specific objection to any of the areas that the Landlord testified needed to be cleaned. The Tenant did not object to the Landlord's testimony that the Condition Inspection Report is evidence of the state of repair and condition of the unit at the time of the move out inspection. The Tenant's photographs are not clear enough to prove the state of cleanliness.

I prefer the Landlords testimony and evidence that the rental unit required cleaning at the end of the tenancy. I find that the Landlord has established the claim for compensation for needing to clean the rental unit at the end of the tenancy. I grant the Landlord \$367.50 for the cost of cleaning the rental unit.

### Security Deposit

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

*The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.*

*If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.*

I find that the Landlord made application to keep the security deposit in compliance with the legislation. The Landlord made application on July 25, 2016, which is within 15 days of the move out inspection that was conducted on July 12, 2016.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful in her application, I order the Tenant to pay the cost of the \$100.00 filing fee for this hearing.

### Landlords Claims

The Landlord has established a monetary claim in the amount of \$2,964.44. This amount is comprised of \$1,900.00 for July 2016, rent; \$100.00 for the cost of the hearing; and \$964.44 for cleaning and repairs.

After setting off the security deposit of \$950.00 towards the claim of \$2,964.44, I grant the Landlord a monetary order in the amount of \$2,014.44

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

### Conclusion

The Tenants failed to pay the rent for July 2016, and left the rental unit unclean. The Landlord has established a monetary claim of \$2,964.44.

The Landlord may keep the security deposit of \$950.00 in partial satisfaction of the Landlord's claim.

After setting off the amount of the security deposit, I grant the Landlord a monetary order in the amount of \$2,014.44. This order must be served on the Tenants and may be enforced in Provincial 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: February 10, 2017

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Residential Tenancy Branch