



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, FF

### Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$5850 for unpaid rent and damages
- b. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenants by mailing, by registered mail to where the tenants resides on November 8, 2017. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

On September 26, 2016 the parties entered into a written fixed term tenancy agreement that provided that the tenancy would start on October 15, 2016 and end on June 30, 2017. The tenancy agreement provided that the tenant(s) would pay rent of \$2500 per month payable in advance on the first day of each month. The tenancy agreement

provided that the tenants would pay a security deposit of \$2500 and a pet damage deposit of \$1250.

The tenants began moving into the rental unit on October 16, 2016. The tenants subsequently decided they were not interested in renting the rental unit and moved out on October 20, 2016. The cheque for the security deposit and rent for the period October 15, 2016 to October 31, 2016 was returned NSF.

The tenant gave the following testimony:

- They decided they did not wish to remain in the rental unit because it was not available on October 15, 2016. He had to pay an additional ½ months rent at his previous rental unit.
- He was not aware he would have to fill the oil tank at a cost of approximately \$1000.
- The landlord had a constant stream of people coming in and out of the rental unit from 8:00 a.m. to 8:00 p.m.
- He had to give his pig away.
- There were 5 cats on the property which had not previously been discussed.
- The landlord left an old dog on the property for them to care for.
- The house smelled of pet urine.
- On one occasion a real estate agent came to show the property without giving notice.
- The landlord previously represented she might enter into a long term rental but changed it on the tenancy agreement.

The landlord testified as follows:

- Given the failure of the tenants to give notice she was not able to re-rent the premises until December 1, 2016 and lost one half of a month rent for October and the full month rent for November.
- The parties had agreed that the garage and barn was not part of the tenancy agreement as the landlord had belongings in those locations.
- The landlord disputes the testimony of the tenant that there was a large number of people coming in and out of the property. She was there on occasion. The furnace technician was there as well.
- The tenants failed to give her notice they were vacating the rental unit
- She was advised by the female tenant that they had decided not to remain in the rental unit because her mother in law had just suffered a heart attack and they needed time to slow down.

- After the tenants advised they were not moving in she had the house cleaned at a cost of \$125, new locks installed at a cost of \$154.75, labour to install the locks at a cost of \$75 and carpet cleaning at a cost of \$275. In addition she said there was miscellaneous expenses of \$195 for utilities, toilet paper etc.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. Where the parties have entered into a fixed term tenancy agreement and the tenants breach that agreement by leaving early, the tenants are obliged to pay the rent for the unexpired term of the agreement subject to the rights of the tenant to end the tenancy early if there has been a breach of a material term to the tenancy agreement and the landlord's obligation to mitigate her loss. Section 45(3) provides as follows:

**Tenant's notice**

**45 (3)** If a 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.

I determined the Tenant failed to prove the landlord breached a material term of the tenancy agreement. Further, the Tenants failed to give the landlord written notice of the alleged breach and a reasonable opportunity to correct the situation. I determined the landlord has acted reasonably in attempting to mitigate the loss but it was not possible to re-rent the rental unit for October and November. As a result I determined the landlord is entitled to \$1250 in loss of rent for the period October 16, 2017 to October 3, 2017 and \$2500 for November for a total of \$3750.

- b. I determined the landlord is entitled to \$125 for the cost of cleaning.
- c. I determined the landlord is entitled to \$154.75 for the cost of changing the locks and \$75 for labour to complete that work as the tenants failed to return the keys.

- d. I dismissed the landlord's claim for the cost of carpet cleaning as the tenants were in the rental property for a short period of time only and the landlord failed to prove the carpets needed to be cleaned.
- e. The landlord claimed the sum of \$195 for miscellaneous claims including utilities, toilet paper etc. The tenant acknowledged responsibility for \$100. I determined the landlord is entitled to \$100 of this claim.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$4204.75 plus the \$100 filing fee for a total of \$4304.75.

#### Conclusion

In summary I ordered that the Tenants pay to the Landlord the sum of \$4304.75.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court 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: May 09, 2017

---

Residential Tenancy Branch