



# 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 dealt with a landlord's application for a Monetary Order for compensation for damage and cleaning; unpaid or loss of rent; unpaid utilities; and, authorization to retain the tenants' security deposit. The landlord and one of the co-tenants appeared at the hearing. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, I explored service of hearing documents and evidence upon each other. There were three co-tenants under the tenancy agreement; however, the landlord only named two co-tenants on his Application for Dispute Resolution. The landlord sent his hearing packages and evidence to only one co-tenant (identified by initials CSM). CSM was not at the hearing. Rather, the other named co-tenant (identified by initials SM) appeared. SM stated that CSM received the registered mail and then sent copies of the landlord's hearing package and evidence to her and the other co-tenant. SM stated that CSM was in a class at the time of the hearing and asked that SM appear and represent her as well. SM stated that all three co-tenants collaborated in preparing their written response and evidence and the other two co-tenants were available to be called as witnesses if necessary. I was satisfied CSM was duly served with notification of the claims against her since the landlord produced a registered mail receipt, including tracking number, to prove that he served CSM. SM stated that she was willing to be deemed sufficiently served since she was provided a copy of the landlord's hearing documents and was prepared to provide a response to the claims against her. Accordingly, I deemed SM sufficiently served pursuant to the authority afforded me under section 71 of the Act. As the third co-tenant was not a named party to this dispute it was unnecessary for me to confirm service of hearing documents upon her. It is important to note that with co-tenancy agreements, co-tenants are jointly and severally liable for debts related to the tenancy. Accordingly, the

landlord may pursue one, all or some of the co-tenants to recover losses and it is upon the co-tenants to apportion the liability among themselves. In this case, the landlord has pursued two of the co-tenants and it shall remain among the co-tenants to pursue the other co-tenant as necessary and in the appropriate forum (Small Claims court).

The landlord confirmed that he was served with the tenants' written response and evidence.

In making my decision I have considered all of the oral, documentary and photographic evidence and oral and written submissions provided to me; however, with a view to brevity in writing this decision I have only summarized or referenced the most relevant submissions and evidence.

#### Issue(s) to be Decided

1. Has the landlord established an entitlement to recover the amounts claimed against the tenants?
2. Is the landlord authorized to retain the tenants' security deposit?

#### Background and Evidence

The parties executed a fixed term tenancy agreement for a tenancy set to commence on August 1, 2016 and end on August 31, 2017. The tenants paid a security deposit of \$1,050.00. The tenants were required to pay rent of \$2,100.00 on the first day of every month and were responsible to pay 60% of the hydro and water bills. The tenancy ended early on May 31, 2017.

A move-in inspection report was prepared at the start of the tenancy. The parties participated in a move-out inspection together at the end of the tenancy; however, the landlord did not fill in the move-out columns of the move-out inspection report. Rather, the landlord wrote in only one section of the move-out report and the tenants declined to sign the report.

Below, I have summarized the landlord's claims against the tenants and the tenants' responses.

**Loss of rent -- \$1,500.00**

The tenants emailed the landlord in late March 2017 to notify the landlord they intended to end the tenancy early. The landlord responded, via email, that the tenants would be held responsible for any rent differential until the end of the fixed term and required them to provide him with a written notice to end tenancy. The tenants delivered a written notice to end tenancy dated April 1, 2017 with an effective date of May 31, 2017. The tenants cite "circumstances" as being the reason they are ending the tenancy without provided any further details of the circumstances.

In April 2017 the rental unit was shown to three sets of prospective tenants by one of the tenants. On May 2, 2017 the landlord executed a three month fixed term tenancy agreement with replacement tenants for the monthly rent of \$1,600.00. The landlord seeks to hold the tenants responsible for the rent differential of \$500.00 per month for the three months remaining in their fixed term, or \$1,500.00.

I heard consistent testimony that the rental unit is located not far from a university and the property is often of interest to students. The landlord submitted that seeking tenants for the summer months is less lucrative since students are not interested in starting a tenancy until September. The landlord submitted that only one set of prospective tenants were interested in taking the rental unit starting June 1, 2017 but they were only will to pay a lesser amount of \$1,600.00 for the summer months. Rather than risk a vacancy the landlord accepted the offer for the lesser amount.

The tenants were of the position the landlord did not do make his best efforts to find replacement tenants that would pay rent at or near the market rent of \$2,100.00. The tenant pointed out that they gave the landlord two months of advance notice to find replacement tenants. The landlord entered into the subsequent tenancy agreement in early May 2017 and took the rental unit off the market despite having the rest of May 2017 to find tenants willing to pay more. The tenants pointed out that there are only two replacement tenants for the rental unit when the rental unit has three bedrooms and there were three co-tenants under their tenancy agreement. The tenants suggested that the landlord may have another tenancy agreement with someone else for the third bedroom. The tenant pointed out the landlord did not submit a copy of his advertisements or any comparable rental advertisements. The tenant pointed out that a two bedroom condominium costs \$1,500.00 per month and \$1,600.00 for the much larger rental unit is unreasonably low.

The tenants provided a copy of an advertisement they posted on-line for the rental unit in May 2017 at the rate of \$2,100.00 and an email they received from a prospective

tenant interested in viewing the unit to demonstrate there was interest in the unit at the rate of \$2,100.00.

The tenants submitted that although there would be less demand for students in the summer months, the rental market in the City is very low and suggested that the landlord may have rented the unit to non-students for market rent of \$2,100.00.

When the tenant submitted that when the tenants enquired with the landlord as to whether the landlord had found replacement tenants the landlord did not indicate he would hold the tenants responsible for any rent differential.

The landlord responded by stating he advertised the rental unit for \$2,100.00 on two websites and he may still be able to provide an advertisement for one website but the other is too old to retrieve electronically. The landlord argued that he made reasonable efforts to mitigate his losses including avoiding a vacancy despite the reduced demand for a three month fixed term in the summer months. The landlord confirmed that there was no other tenancy agreement for replacement tenants other than that produced as evidence. In response to the tenant's submission that a two bedroom condominium rents for \$1,500.00 per month, the landlord argued that location affects market rental rates.

#### **Cost to re-rent unit -- \$100.00**

The landlord seeks to recover \$100.00 from the tenants. In the landlord's written submissions the landlord did not specify how he arrived at this amount. During the hearing, the landlord stated that this amount is for his time spent advertising the rental unit and meeting with prospective tenants. The landlord estimated that he spent three hours performing these tasks.

The tenants submitted the landlord did not provide support for the amount claimed and pointed out that it was the tenants that showed the rental unit to three sets of prospective tenants during their tenancy. The tenants also submitted that they did not see the landlord's advertisements when they checked various websites.

The tenant questioned whether the replacement tenants moved out at the end of August 2017 or continued to live in the rental unit and under what terms. The landlord stated that the replacement tenants continued to reside in the rental unit after August 2017 under a one year fixed term tenancy agreement at an increased rental rate of \$2,100.00 or \$2,200.00 per month.

### **Unpaid hydro and water -- \$133.00 and \$70.00**

The landlord submitted that the tenants owe for utilities for the last few months of their tenancy. The tenants acknowledged that they do owe for utilities but questioned the landlord's calculations.

The landlord provided a hydro bill for the period of March 25, 2017 to May 25, 2017 (billed on May 29, 2017) in the sum of \$296.10. The landlord multiplied this amount by 60% and then deducted the partial payment he received from one of the co-tenants in arriving at an outstanding amount of \$118.44 [ $(\$296.10 \times 60\%) - \$59.22$  partial payment]. The landlord used the above described bill to estimate the hydro cost for the stub period of May 26 – 31, 2017 of \$14.56. The sum claim for outstanding hydro is \$133.00 [ $\$118.44 + \$14.56$ ].

The landlord provided a water bill dated February 21, 2017 to estimate the water charge for the tenants for the period of February 15, 2017 to May 2017. The bill dated February 21, 2017 shows a water charge of \$11.20 plus \$120.56, or \$131.76 for a four month period (120 days). The landlord estimated the tenants' outstanding water bill for February 15, 2017 to May 31, 2017 to be \$70.00 [calculated as  $\$131.76 \times 107/120$  days x 60%].

Although the tenants suggested in their written submission the landlord failed to take into account the partial hydro payment of \$59.22 by one of the co-tenants, after reviewing the calculations during the hearing, the tenant acknowledged the tenants owe the amount of utilities claimed by the landlord.

### **Damage/cleaning -- \$100.00**

In the landlord's written submission, the landlord indicated he was seeking compensation for his time to clean cabinets, patch holes in the bedroom walls and deal with garbage and recycling left behind by the tenants. The landlord explained during the hearing that he purchased materials as well but did not keep the receipts. During the hearing, the landlord also stated he was spent time cleaning the carpets, the bathroom and he fixed a baseboard.

The tenant submitted that the cabinets were left clean at the end of the tenancy, the holes in the walls were ordinary wear and tear, and the tenants left their garbage and recycling in the bins provided. The tenants submitted that the landlord had failed to

provide sufficient bins for the two rental units at the property and pointed to emails they had sent to the landlord during the tenancy raising this as an issue. The tenant also pointed out that the tenants in the other rental unit at the property were also changing at the same time the tenants were moving out so the extra garbage and recycling was likely from them as well.

The tenant pointed out that the baseboards and carpet cleaning and bathroom cleaning were not raised as issues prior to this hearing; however, the move-in inspection report shows that baseboards were missing in some areas, and the carpets at the rear entry were described as being stained on the move-in inspection report.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to each of the landlord's claims against the tenants.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

### **Loss of Rent**

Under section 26 of the Act, a tenant is required to pay rent when due as provided in their tenancy agreement. Where parties enter into a fixed term tenancy agreement, both parties are bound to fulfill the fixed term, except in certain circumstances as provided under the Act. If a tenant does end a fixed term tenancy early, the landlord may recover unpaid and/or loss of rent from the tenant for the remainder of the fixed term.

Where a tenant gives a landlord a written notice of their intention to bring the tenancy to an end during the fixed term does not bring the tenant's obligation to pay rent for the

fixed term to an end, except in very limited circumstances provided under the Act (which I shall describe further below in this decision). Rather, the tenant's notice serves to put the landlord on notice that the tenants intend to breach the tenancy agreement so that the landlord may commence efforts to mitigate losses. When a tenant gives a landlord a notice that they will be ending the tenancy early, it is expected that the landlord will in turn put the tenants on notice that he may hold the tenants responsible for paying rent or loss of rent for the remainder of the fixed term.

The tenants in this case entered into a fixed term tenancy agreement with the landlord that they were bound to fulfill until August 31, 2017. The tenants brought the tenancy to an end at the end of May 2017 meaning they failed to fulfill the fixed term and they are in breach of their tenancy agreement. The landlord put the tenants on notice that he would hold the tenants responsible for loss of rent when he responded to their emailed notice and I am satisfied that the tenants decided to give the landlord written notice with their eyes open to the possibility they may be held liable to pay loss of rent to the landlord.

While the tenants submitted that it was personal circumstances that caused them to end the tenancy early, a tenant's personal circumstances do not give a tenant the right to end the tenancy early except in two circumstances: a tenant fleeing domestic abuse or a tenant going into a care facility. The tenants did not provide evidence to suggest one of these circumstances applied. The only other circumstance where a tenant may legally end the tenancy early is where the landlord has breached a material term of the tenancy agreement and the landlord does not correct the breach despite the tenant giving the landlord written notice and sufficient time to correct the breach. During the hearing, the tenant confirmed that the reason for ending the tenancy was unrelated to the landlord's actions. As I informed the tenant during the hearing, a tenant may decide to move away from a rental unit to accommodate their personal situation and the tenant has the right to do that; however, exercising that right may come at a cost to the tenant, including being responsible to pay rent or loss of rent for the remainder of a fixed term tenancy agreement, as it would be unjust to transfer the cost of the tenant's personal circumstance to the landlord.

The landlord provided a rental agreement for the subsequent tenancy to show that the rental unit was re-rented at a lesser amount of \$1,600.00 per month for the remainder of the subject tenancy. The tenants suggested the landlord may have another tenancy agreement with someone else for another bedroom; however, it is not unusual for two tenants to rent a three bedroom unit, I found the landlord to be sufficiently credible to accept his testimony that there was no other tenancy agreement for another bedroom,

and the tenant's mere speculation in the absence of any corroborating evidence did not persuade me. Accordingly, I am satisfied the landlord re-rented the unit for \$1,600.00 per month for the months of June 2017 through August 2017 and suffered a loss of \$1,500.00 due to the tenants' breach of their tenancy agreement.

The primary dispute raised by the tenants under this claim was the landlord's efforts to mitigate losses. Section 7(2) of the Act requires that the applicant to:

"A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

[Reproduced as written with my emphasis underlined]

In order for me to deny the landlord's claim, I must find the landlord failed to take reasonable measures to mitigate losses.

In this case, it is undisputed that the rental unit was shown to a number of prospective tenants in April 2017 which leads me to accept the landlord's position that he advertised the unit for rent after receiving the tenant's written notice to end tenancy. The landlord secured replacement tenants in early May 2017 to commence a tenancy immediately after the subject tenancy ended, resulting in no vacancy. I reject the tenant's position that the landlord could have or should have spent the month of May 2017 advertising and showing the unit to prospective tenants who may be willing to pay a higher amount of rent as most suitable tenants are not in a position to immediately commence a new tenancy. Had the landlord employed the approach suggested by the tenants, I find it reasonably likely that a vacancy may have been the result and the tenants would have been responsible for paying rent for the vacant month(s) at \$2,100.00 per month.

The tenants provided some evidence that an advertisement they placed for the unit yielded a person interested in viewing the unit; however, I find that evidence does not persuade me that a viable replacement tenant would have been secured. Not every person interested in viewing a unit wants to proceed to enter into a tenancy. Nor, is every prospective tenant a tenant the landlord finds suitable after taking into account factors such as ability to pay, reference checks, and the like.

Finally, I find the landlord provided a reasonable explanation that a fixed term tenancy over the summer months, especially for a rental unit located in an area that often attracts students, will garner less rent than a longer term tenancy set to begin at or near the time school begins.



For all of the above reasons, I find I am satisfied the landlord took reasonable steps to mitigate losses and I grant the landlord's request to recover loss of rent of \$1,500.00 from the tenants for their breach of the fixed term tenancy agreement.

### **Cost to re-rent**

Undoubtedly the landlord spent some time seeking replacement tenants for the rental unit; however, I find the landlord's claim is weak in that he did not specify how he arrived at the sum claimed in his written submissions or provide a log of the time spent performing certain tasks. Further, the replacement tenants he secured in May 2017 remained tenants after August 2017 and the landlord would have spent time securing new tenants when the subject tenancy ended. Accordingly, I find the landlord did not satisfy me that he lost any more time than he would have had this fixed term run its course to the end of August 2017. Therefore, I deny this portion of the landlord's claim.

### **Unpaid utilities**

The landlord provided utility bills and calculations to demonstrate an entitlement to the amounts sought. After reviewing the landlord's calculations during the hearing, the tenant accepted the amounts claimed were accurate or a reasonable estimate. Therefore, I award the landlord the amounts claimed of \$133.00 for hydro and \$70.00 for water.

### **Damage/cleaning**

Under section 37 of the Act, a tenant must leave the rental unit undamaged and reasonably clean. Section 37 also provides that reasonable wear and tear is not considered damage. Accordingly, a landlord may seek compensation from a tenant where the tenant leaves the rental unit damaged or not reasonably clean.

In the landlord's written submissions and on the move-out inspection report, the landlord indicated there were nail holes in the bedroom walls. The tenants did not deny there were nail holes, but were of the position it constitutes ordinary wear and tear. Residential Tenancy Branch Policy Guideline 1 provides that landlords should expect that tenants will hang artwork on the walls and that the holes that result are wear and tear, unless there are an excess number of holes or the holes are large. The landlord did not provide any photographs of the walls to establish that there was an excessive

number of holes or very large holes. Therefore, I find the landlord did not provide sufficient evidence to demonstrate the nail holes exceeded wear and tear.

The move-out inspection report indicates that the landlord intended to hold the tenants responsible for carpet stains. The landlord did provide a photograph of stains on carpeting by a sliding door. The tenant pointed out that the carpet was already stained at the time of moving in, as evidenced by the move-in inspection report where it states "back entry carpet stained/dirty". I find the tenants successfully refuted the landlord's claim that the tenants are responsible for carpet stains.

In the landlord's written submissions and move-out inspection report, the landlord indicates that the tenants left garbage behind. The landlord provided photographs of recycling bins that are overflowing with recyclables. I heard unopposed testimony that the residential property includes more than one rental unit and that the other unit was also in the process of changing tenants. I find there is insufficient evidence to demonstrate that the excessive recycling cost the landlord any money or time and if it did that it was solely attributable to these tenants.

In the landlord's written submissions, he indicated the tenants left cabinets that were dirty. The landlord provided photographs of the inside of some cabinets that appear to be dirty. The tenants submitted that they left the cabinets cleaned and noted that dirty cabinets were not listed on the move-out inspection report. Since the landlord did not note dirty cabinets on the move-out inspection report, I find the disputed verbal testimony and the landlord's grainy black and white photographs do not satisfy me that the tenants left the unit with dirty cabinets.

During the hearing the landlord raised other issues that he dealt with, such as cleaning of the bathroom and fixing a baseboard, yet these were not identified by the landlord during the move-out inspection or in his written submissions. Nor, was I provided photographs to demonstrate the need to clean or repair these areas. Further, the tenant pointed out that the move-in inspection report shows that there was missing baseboards at the start of the tenancy. Therefore, I find the landlord did not sufficiently set out a claim for these items or provide sufficient proof.

Considering all of the above, I find the landlord did not satisfy me that the tenants are responsible to compensate him \$100.00 for cleaning or damage and I dismiss this portion of his claim.

### **Filing fee, security deposit and Monetary Order**

Given the landlord's success in the establishing an entitlement to the largest component of his claim and I further award the landlord recovery of the \$100.00 filing fee he paid for this application.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the amounts awarded to the landlord.

In light of all of the above, I provide the landlord with a Monetary Order to serve and enforce upon the tenants, calculated as follows:

Loss of rent	\$1,500.00
Utilities – hydro	133.00
Utilities – water	70.00
Filing fee	100.00
Less: security deposit	<u>(1,050.00)</u>
Monetary Order for landlord	\$ 753.00

To enforce the Monetary Order, it must be served upon the tenants and it may be filed in Provincial Court (Small Claims division) to enforce as an order of the court.

### Conclusion

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$753.00 to serve and enforce upon the tenants.

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: November 24, 2017

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Residential Tenancy Branch