



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ASCENT REAL ESTATE MANAGEMENT CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD

### Introduction

On June 15, 2017, the Landlord submitted an Application for Dispute Resolution seeking a monetary order for damage to the unit; 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's agent ("the Landlord") and Tenants attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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 Landlord's Application did not include the dispute code for a monetary order for unpaid rent; however, I find that the details provided within the Application are clear that the Landlord is including a claim for a loss of rent. The Landlord requested that the Application be amended to include a loss of rent, and I find it reasonable to grant the Landlord's request. The Application is hereby amended to include a monetary order for unpaid rent.

At the end of the hearing the Tenants identified that the Landlord's application contains an incorrect address for the Tenants. The Landlord agreed to amend his application to the address the Tenants provided. The Application was updated accordingly.

#### Issues to be Decided

- Is the Landlord entitled to compensation for loss of rent?
- Is the Landlord entitled to compensation for damage to the rental unit?
- Is the Landlord authorized to retain the security deposit of \$550.00 in partial satisfaction of the claim?
- Is the Landlord entitled to recover the cost of the filing fee?

#### Background and Evidence

The parties testified that the tenancy began on June 1, 2016, as a one year fixed term tenancy that could continue thereafter as a month to month tenancy. Rent in the amount of \$1,100.00 was due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$550.00.

The Tenant's moved out of the rental unit on May 31, 2017.

The Landlord is seeking compensation for the following items:

June 2017, Rent	\$1,100.00
Damage	\$600.00
Cleaning	\$275.00
Carpet Cleaning	\$250.00
Failing to attend inspection	\$190.00
Filing Fee	\$100.00

The Landlord is seeking to retain the security deposit of \$550.00 in partial satisfaction of the claims for rent and damage.

#### June 2017, Rent

The Landlord is claiming the amount of \$1,100.00 for a loss of rent for June 2017. The Landlord testified that the Tenants did not give proper notice to end the tenancy and the Landlord was not able to rent the unit out for the month of June 2017. The Landlord submitted that the Tenants gave notice to end the tenancy on May 7, 2017 at 8:05 pm.

The Landlord provided a copy of an email he received from the Tenants dated May 7, 2017, that states the Tenants will be moving out on May 31, 2017.

In response, the Tenants testified that on April 30, 2017, they verbally informed the Landlord's secretary that they were moving out. They testified that on May 1, 2017, the Landlord received notice that they were moving out. The Tenants provided a copy of an email dated June 1, 2017, that they received from the Landlord that states the Landlord received their notice on May 1, 2017. The Tenants submit that the Landlord received their notice 30 days before May 31, 2017.

Damage \$600.00.

The Landlord testified that the Tenants are responsible for damaging the rental unit. The Landlord submitted that the Tenants did damage to the walls and other areas. The Landlord amended his claim amount to \$600.00. The Landlord provided black and white photocopied photographs of the interior of the rental unit. The Landlord referred to the condition inspection report in support of his claim that the Tenants are responsible for the damage.

In response, the Tenants submitted that they do not agree with the Landlord's claim. The Tenants submit that the condition inspection report shows that there was damage present at the start of the tenancy.

Cleaning \$275.00

At the hearing the Landlord withdrew the claim for compensation for cleaning of the rental unit.

Carpet Cleaning \$250.00

The Landlord submitted that the Tenants did not steam clean the carpets before they moved out of the unit. The Landlord testified that he had the carpets professionally cleaned after the Tenants left. The Landlord did not provide an invoice for the cost of the carpet cleaning.

The Tenants submitted that they did not clean the carpet at the end of the tenancy and they agreed to pay the amount the Landlord is claiming for the cleaning of the carpets.

Compensation for Failure to Attend \$190.00

At the hearing the Landlord withdrew his claim for compensation due to his allegation that the Tenant failed to attend inspections and showings.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim.

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.*

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

*An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.*

*A party seeking compensation should present compelling evidence of the value of the damage or loss in question.*

Section 45 of the Act states that a Tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The Residential Tenancy Policy Guideline #3 Claims for Rent and Damages for Loss of Rent provides:

*damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.*

After considering the testimony and evidence of the Landlord and Tenants, and on balance of probabilities, I make the following findings:

#### June 2017 Rent

I find that the Tenants did not provide proper notice to end the tenancy. The Tenants' notice needed to be provided to the Landlord in writing the day before the day in the month that rent is payable under the tenancy agreement. The parties testified that rent was due on the first day of each month. The Tenants were required to provide written notice before June 2017.

The Tenants are responsible to pay for the loss of rent incurred by the Landlord when he was not able to rent the unit out for June 2017.

I award the Landlord \$1,100.00 for June 2017, rent.

#### Damage

I find that the condition inspection report ("the Report") is reliable evidence of the condition and state of repair of the rental unit at the start and end of the tenancy.

I find that there was existing damage to areas of the rental unit at the start of the tenancy. The report indicates a hole and filled in holes in entry halls, livingroom, and family rooms. The Report also indicates there was damage in the kitchen including the range. The report indicates there was damage to woodwork, doors, trim, and mirror in the bathroom.

I find that the Landlord has provided insufficient evidence that the Tenants are responsible for the damage that the Landlord is claiming for. The Landlords claim for compensation of \$600.00 for damage is dismissed.

#### Carpet Cleaning

The Tenants agreed to the Landlords claim for the cost of cleaning the carpet. I award the Landlord \$250.00.

#### Monetary Awards

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord had some success in his application, I order the Tenants to pay the Landlord for the \$100.00 cost of the filing fee for this hearing.

The Landlord has established a monetary claim for a loss of rent, cleaning, and the filing fee, in the amount of \$1,450.00.

I authorize the Landlord to keep the security deposit of \$550.00 in partial satisfaction of his claim.

After setting off the security deposit of \$550.00 from the award of \$1,450.00, I find that the Landlord is entitled to a monetary order in the amount of \$900.00.

I grant the Landlord a monetary order in the amount of \$900.00. The order must be served on the Tenants and may be enforced in the Provincial Court.

### Conclusion

The Landlord established a claim for compensation in the amount of \$1,450.00.

The Landlord is authorized to keep the security deposit of \$550.00.

The Landlord is granted a monetary order in the amount of \$900.00

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: December 15, 2017

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Residential Tenancy Branch