



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MND, MNDC, MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for rent, damage to the rental unit, and loss under the *Act*, regulations or tenancy agreement, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord (the “Agent”), and the Tenant M.S., both of whom provided affirmed testimony. The Tenant K.S. did not attend. The Landlord and Tenant were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) and for which testimony was provided in the hearing. However, I refer only to the relevant facts and issues in this decision.

### Preliminary Matters

Approximately three minutes after the start of the hearing, the Tenant M.S. joined the conference call. I advised the Tenant that the Landlord was on the line and provided a brief recap of the matters already covered. The Tenant then requested that the hearing be adjourned to another date and time due to a scheduling conflict with their work.

The Tenant testified that they had been on vacation for two weeks, returning to the office on Monday January 8, 2017. The Tenant stated that upon their return to work, they discovered that a meeting requiring their attendance had been set during the time of the hearing and could not be rescheduled. The Tenant stated that they contacted the Residential Tenancy Branch (the “Branch”) on January 10, 2017, in an attempt to reschedule the hearing but were advised that the Landlord would not consent to the rescheduling at that time. As a result, the Tenant attended the hearing to request the adjournment.

The Landlord objected to the Tenant’s request for an adjournment stating that they already had to take time off work to attend the hearing today and argued that the Tenants have had

sufficient time to make similar arrangements as they have known about the hearing since July, 2017.

The documentary evidence before me indicates that the Landlord's Application was filed in July, 2017, and that the Notice of Hearing was generated by the Branch on July 24, 2017. While the parties could not recall the exact dates that the Notice of Hearing was sent and received, the Landlord testified that the Notice of Hearing was sent to the Tenant by registered mail in accordance with the Rules of Procedure and the Tenant acknowledged receiving the Notice of Hearing in a timely manner, well before the hearing date.

I inquired with the Tenant as to why the other Respondent was not in attendance and the Tenant advised me that K.S., who is their spouse, is very upset by this whole process and therefore will not be attending the hearing.

In the hearing I considered the Tenant's request, in conjunction with section 7 of the Rules of Procedure, and the request for an adjournment was denied for the following reasons. Based on the Testimony of the parties, I found that the Tenants had sufficient notice of the date and time of the hearing to allow them to make arrangements to attend. As a result, I determined that the schedule conflict with work was insufficient to warrant an adjournment.

Further to this, as there were two respondents listed on the Landlord's Application, and because Tenants are jointly and severally liable under the *Act*, I also found that the inability of only one of the Tenants to attend the hearing was insufficient to warrant an adjournment. Although the Tenant M.S. stated that the other Tenant is very upset by this matter and therefore will not attend, no evidence or testimony was presented to establish that they were unable to attend due to unforeseen circumstances beyond their control. Finally, I considered the fact the Tenants were permitted under section 6.7 of the Rules of Procedure to appoint an agent or a lawyer to represent them in the hearing if they were unable to attend on their own behalves.

The parties were advised that the adjournment request was denied and that the hearing would proceed as scheduled. The Tenant M.S. was also cautioned about the consequences of not attending the hearing. Shortly thereafter, at approximately 1:12 P.M. the Tenant M.S. excused himself and left the hearing. Section 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party. As a result, the hearing proceeded as scheduled with the Landlord, who was the only remaining party present.

#### Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for the loss of rent?

Is the Landlord entitled to a Monetary Order for damage to the unit or loss under the *Act*, regulations of tenancy agreement?

Is the Landlord entitled to recovery of the \$100.00 filing fee?

### Background and Evidence

The Landlord testified that he had a collegial relationship with the Tenant M.S. through work and that when he and his family temporarily relocated to another area of BC for the school year, a verbal tenancy agreement was reached between the Tenant M.S. and their spouse, K.S. to rent the Landlords furnished home. The Landlord stated that according to the verbal tenancy agreement, the Tenants would rent the home from September 1, 2017 – June 30, 2017, at which point the Landlord and his family would return to the home and the Tenants would move out. The Landlord stated that rent was \$1,200.00 per month, and that the Tenants were responsible to pay him for the following utilities: gas, electricity, internet, telephone, and garbage pick-up.

The Landlord stated that in October of 2016, the Tenants requested permission to remove the carpet from one of the bathrooms and install tile as a thank-you to the Landlords for renting them their home at below market price and because it was their own preference to have tile. The Landlord testified that they agreed to this arrangement on the condition that it was the responsibility of the Tenants to pay for all work and materials and to have the work completed prior to the end of the tenancy. In support of his testimony, the Landlord pointed to e-mails from the Tenants in their own evidence discussing this arrangement. The Landlord stated that although the carpet was removed and tiles were purchased by the Tenants, the tile work was never completed. In support of this testimony the Landlord submitted photographs of the bathroom. As a result, the Landlord sought compensation to have the tile work completed. The Monetary order Worksheet submitted by the Landlord states that he is seeking \$1,260.00 for bathroom repairs, however, the quote submitted in the documentary evidence states that the cost for this work is \$1,200.00, which includes the use of the tiles previously purchased by the Tenants. When I asked the Landlord to explain the discrepancy, he stated that the quote is for labour only and the remaining \$60.00 is for cost of new sub floor materials as tile is heavier than carpet and new baseboards as they will need to be removed and replaced as the height of the carpet and tile are not the same.

The Landlord testified that the Tenants were required to pay for gas, electricity, internet, telephone, and garbage pick-up and copies of the utility bills and requests to pay were sent to the Tenants. However, the Landlord stated that the Tenants only made two utility payments, one in the amount of \$214.01 on March 12, 2017, and one in the amount of \$153.39 on March 16, 2017. The Landlord stated that the Tenants advised him that they would be deducting \$1,260.00 from the utilities owed for repairs; however, the Landlord testified that he was not previously advised that any repairs were required or provided an opportunity to complete any necessary repairs. As a result, the Landlord testified that the Tenants were not given permission to deduct \$1,260.00 from the utilities owed. As a result, the Landlord testified that the Tenants currently owe \$2,098.45 in outstanding utilities; \$2,465.85 owed, less the \$367.40 paid. In support of his

testimony the Landlord submitted copies of the utility bills, a ledger showing the amounts owed and paid, a letter sent to the Tenants regarding the utilities along with a registered mail receipt, and an e-mail from the Tenants confirming that they would be sending money for the utilities.

The Landlord stated that despite the fact that there was a fixed-term tenancy agreement in place until June 30, 2017, in mid-March of 2017, the Tenants advised him that they intended to move out prior to the end of the tenancy agreement as they had purchased property. The Landlord stated that the Tenants subsequently vacated the property on May 18, 2017, and the Landlord testified that despite his request that the Tenants leave the keys under the door mat, they mailed them to him instead. The Landlord stated that as a result, he did not receive the keys to the home until May 29, 2017. Given the late return of the keys, the state of the bathroom, and the fact that the Landlords were scheduled to move back into the property on July 1, 2017, as per the tenancy agreement, the Landlord stated that it was not possible to rent out the property for the remaining one month of the fixed-term tenancy agreement. As the Tenants ended the fixed-term tenancy early and without consent of the Landlord, the Landlord sought \$1,200.00 for the loss of June rent. The Landlord stated that there was no further loss of rent as they moved back into the property as scheduled in July, 2017.

#### Analysis

Based on the documentary evidence and undisputed testimony before me, I find that the Tenants were responsible to pay for gas, electricity, internet, telephone, and garbage pick-up and that they did not have a right under the *Act* to deduct all or a portion of the amounts owed for these utilities. As a result, I find that the Tenants owe \$2,098.45 in outstanding utilities to the Landlord.

As there was a fixed-term tenancy agreement in place until July 30, 2017, and neither party may end a fixed-term tenancy agreement early without the consent of the other party, I find that the Tenants were responsible to pay the rent of \$1,200.00 for the duration of the tenancy agreement. I also accept the Landlord's testimony that they were unable to rent the home to another tenant for June due to the late return of the keys, the state of the bathroom, and the fact they were moving back into the house in July. As a result, I find that the Tenants owe the Landlord \$1,200.00 for the loss of rent for June 2017.

I also find that the Tenants were responsible to re-tile the bathroom at their own cost and I grant the Landlord's claim for \$1,260.00 to complete this repair. Pursuant to section 72 of the *Act*, the Landlord is also entitled to the recovery of the \$100.00 filing fee.

Although the Landlord claimed \$26.20 in registered mail costs, I dismiss this claim without leave to reapply as the *Act* provides several free options for the service of documents and evidence.

Based on the above, and pursuant to section 67 of the *Act*, the Landlord is therefore entitled to a Monetary Order in the amount of \$4,658.45.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$4,658.45. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this 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: February 19, 2018

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Residential Tenancy Branch