



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding HOMELIFE PENNINSULA PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

### **DECISION**

Dispute Codes MNR, MND, MNDC, MNSD, FFL

#### Introduction

On August 15, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for a monetary order for damage to the unit; for unpaid rent; to keep the security deposit; and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant 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.

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.

#### Issues to be Decided

- Is the Landlord entitled to compensation for unpaid rent?
- Is the Landlord entitled to compensation for damage to the unit?
- Is the Landlord entitled to keep the security deposit 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 commenced on May 1, 2018, on a month to month basis. The Tenant was to pay the Landlord rent in the amount of \$2,800.00 by the first day of each month. The Tenant paid the Landlord a security deposit of \$1,400.00. The Landlord provided a copy of the tenancy agreement. The tenancy ended on August 1, 2018, when the Tenant moved out of the unit.

The Landlord is requesting compensation for the following items:

August 2018 Rent	\$2,800.00
Cleaning and Repairs	\$1,173.50
Unpaid utilities	\$100.35
Late Fees August	\$50.00

#### August 2018 Rent

The Landlord testified that the Tenant gave less than one months' notice to end the tenancy and consequently the Landlord suffered a loss of rent for the month of August.

The Landlord testified that the Tenant signed a tenancy agreement to move into a different rental unit, but then changed her mind.

In reply, the Tenant testified that she received a 1 Month Notice To End Tenancy For Cause from the Landlord on June 26, 2018. The Tenant did not dispute the Notice. The Landlord and Tenant agreed that the 1 Month Notice was rescinded based on the agreement that the Tenant would move to a new tenancy. The Tenant testified that she changed her mind about taking the new rental unit and decided to move out of her rental unit on August 1, 2018.

#### Cleaning

The Landlord testified that the rental unit was not Tenant ready after the Tenant moved out. The Landlord testified that the rental unit was dirty. The Landlord testified that it took two cleaners 13 hours to clean the unit. The Landlord provided photographs to show the condition and state of repair of the rental unit at the end of the tenancy. The Landlord also provided a condition inspection report completed at the end of the tenancy. The Landlord provided an invoice dated August 10, 2018, in the amount of \$260.00 for the cost of having the unit cleaned.

In reply, the Tenant testified that she left things dirty. She testified that the bathtub was dirty.

#### Carpet

The Landlord testified that the carpet was left dirty at the end of the tenancy. She testified that the tenancy agreement requires the carpet to be cleaned at the end of the tenancy. The Landlord provided an invoice dated August 13, 2018, for the cost of \$420.00 for the carpet cleaning. The Landlord's photographic evidence includes photographs of the carpet at the end of the tenancy.

In reply, the Tenant testified that the carpet was dirty at the start of the tenancy. She testified that she tried to clean it with her own machine.

#### Repairs

The Landlord testified that she made repairs to the unit and paid to have rubbish removed at the end of the tenancy. The Landlord testified that the master bedroom door was repaired and a blind was replaced. She testified that the closet doors in the basement were reinstalled. She testified that the Tenant left a couch that needed to be disposed. The Landlord provided an invoice dated August 16, 2018, for the costs to remove the couch; replace lightbulbs; and reinstall doors. The invoice indicates that the rate was \$50.00 per hour for labor for the amount of \$275.00 and \$142.40 for materials.

In reply, the Tenant acknowledged that she left a couch in the unit when she moved out. She acknowledged that she did not replace lightbulbs. She testified that the blinds were damaged and they were removed by the Landlord at the start of the tenancy in May 2018.

#### Unpaid Utilities

The Landlord testified that the Tenant did not pay the final gas utility bill. The Landlord is seeking \$100.35. The Landlord testified that the Tenant also owes \$7.85 for hydro charges. The Landlord provided copies of the utility bills. The tenancy agreement indicates that heat and electricity are not included in the rent.

In reply, the Tenant testified that on August 15, 2018 she paid the amount of \$118.00 to the gas utility company. She testified that she paid the \$7.85 using online banking on August 10, 2018.

The parties agreed that the Tenant would provide proof of the gas utility payment and hydro payment to the Landlord and to the Residential Tenancy Branch within one day following the hearing.

#### Late Fees August

The Landlord is claiming a late fee of \$25.00 and a bank NSF fee of \$25.00 for the late rent payment in July 2018. The Landlord testified that the Tenant paid her rent in the office on July 5, 2018. The tenancy agreement contains terms that permit the Landlord to charge the Tenant an amount of \$25.00 for late payment of rent and for NSF bank charges.

In reply, the Tenant testified that she paid her rent on July 2, 2018. She testified that she already paid the NSF fee.

The Tenants documentary evidence of a text message dated July 3, 2018, sent to the Landlord indicates that she notified the Landlord that the rent bounced on July 3, 2018.

#### Security Deposit

The Landlord made application to keep the security deposit on August 15, 2018.

The Landlord is seeking to retain the security deposit of \$1,400.00 in partial satisfaction of the claim for unpaid rent and damage.

The Tenant submitted that there was no inspection of the rental unit prior to her moving in. She testified that the Landlord attended on May 20, 2018 and completed the condition inspection report.

In reply, the Landlord testified that the owner and Tenant signed the document on May 2, 2018.

The Tenant replied that she moved into the unit on May 1, 2018. The Tenant provided a copy of a move in inspection document dated and signed on May 2, 2018.

#### 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.*

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.*

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

*a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.*

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

#### August 2018, Rent

I find that when the parties agreed that the 1 Month Notice was rescinded, the existing tenancy agreement remained in force. At that point the Tenant did not have a legal right to end the tenancy without giving the Landlord proper notice required under the Act. I find that the Tenant chose to move out early, without proper written notice, and the Landlord suffered a loss of rent for the following month.

I find that the Tenant is responsible to compensate the Landlord for a loss of rent for the month of August 2018. I award the Landlord the amount of \$2,800.00.

#### Cleaning

The Tenant acknowledged that she left things dirty in the rental unit. I accept the Landlords photographs that show the rental unit was left dirty. I find that the Landlords invoice for the cost of cleaning the five bedroom rental unit is for a reasonable amount.

I find that the Tenant left the rental unit dirty and is responsible to pay the Landlords costs for cleaning the unit.

I award the Landlord the amount of \$260.00.

#### Carpet

I find that regardless of the cleanliness of the carpet at the start of the tenancy, the Tenant is responsible to have the carpet cleaned at the end of the tenancy. I find that the Tenant's efforts to clean the carpet with her own machine were not sufficient. I find that the Landlords photographs show the carpet was dirty at the end of the tenancy.

I find that the Tenant left the carpet dirty and is responsible to pay the Landlords costs for cleaning the carpet. I find that the Landlords invoice for the cost of cleaning the carpets in a five bedroom unit is a reasonable amount.

I award the Landlord the amount of \$420.00.

#### Repairs

I find that the Tenant is responsible for the Landlords costs to remove the couch; replace lightbulbs and patch a door. There is insufficient evidence from the Landlord that the Tenant is responsible for the cost to replace the blinds or reinstall closet doors in the basement. I find that the Landlord has duty to minimize the loss. I find that the amount of \$50.00 per hour to remove a couch and install light bulbs is not a reasonable amount.

The Landlord's invoice does not list the material purchased or break down the cost of performing each task or repair. While I find that the Tenant is responsible for some repairs, and the Landlord has suffered a loss; the Landlord has not proven the value of the loss and the amount being charged for labor is high. In these circumstances I find a nominal award to be warranted. I award the Landlord a nominal amount of \$175.00 for the cost of the materials and repairs.

#### Unpaid Utilities

The Residential Tenancy Branch did not receive the additional evidence from the Tenant to prove she paid the utility bills. Additional evidence was not uploaded into the online application system and the case management system notes indicate that the Tenant has not contacted the Residential Tenancy Branch since the hearing to provide the evidence or to report a problem with providing the evidence.

I find that the tenancy agreement requires the Tenant to pay for electricity and heating costs. I accept the Landlord's testimony and evidence that the Tenant has failed to pay the utility costs. I grant the Landlord the amount of \$100.35 and \$7.85 for utility costs.

#### Late Fees for July 2018

I find that the tenancy agreement contains a term that the Tenant will pay a \$25.00 fee for late rent payments. I find that the Tenant was late paying the rent for the month of July 2018. The Act allows a

Landlord to charge a Tenant an NSF fee. There is insufficient evidence from the Tenant that she paid the NSF fee for the bounced July 2018, rent.

I grant the Landlord the amount of \$50.00 for late fees.

#### Security Deposit

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. The right of a Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the report and give the tenant a copy of it in accordance with the regulations. The tenancy regulation requires that the inspection must take place when the rental unit is empty of the Tenant's possessions, unless the parties agree on a different time.

I find that the tenancy agreement indicates the tenancy began on May 1, 2018. The Tenant testified that she moved in on May 1, 2018. I find that the condition inspection report for the move in inspection is dated May 2, 2018. There was no testimony from the Landlord that the parties agreed to conduct the inspection at a different time.

I find that the Landlord did not comply with the regulation that requires an inspection of the unit to take place when the unit is empty of the Tenant's possessions. The Landlords right to claim against the security deposit for damage is extinguished.

I find that the Landlord retains the right under the Act to make claims for damage to the rental unit and can claim against the deposit for unpaid rent. Since the Tenant is responsible for the Landlords loss of August 2018, rent, I authorize the Landlord to keep the security deposit in partial satisfaction of the rent owing for August 2018.

#### Awards

The Landlord has established a monetary award in the amount of \$3,813.20. After setting off the security deposit of \$1,400.00 towards the award of \$3,813.20. I find that the Tenant owes the Landlord the balance of \$2,413.20.

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 with her application, I order the Tenant to repay the \$100.00 of the fee that the Landlord paid to make application for dispute resolution.

I grant the Landlord a monetary order in the amount of \$2,513.20. The monetary order must be served on the Tenant and may be enforced in the Provincial Court.

#### Conclusion

The Landlords claims for loss of rent and costs for cleaning and damage were mostly successful. The Landlord is authorized to keep the security deposit towards the loss of rent.

The Landlord has established a monetary award in the amount of \$3,813.20. After setting off the security deposit of \$1,400.00 towards the award of \$3,813.20 I find that the Tenant owes the Landlord the balance of \$2,413.20.

I grant the Landlord a monetary order in the amount of \$2,513.20 which includes the cost of the filing fee.

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: January 4, 2019

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Residential Tenancy Branch