



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSD, MND, MNR, FF

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income, damages and for the filing fee. Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants represented themselves and were accompanied by their agent. The landlord represented himself.

As both parties were in attendance, I confirmed service of documents. The tenants confirmed receipt of the landlord's evidence and stated that they did not file any of their own. I find that the tenants were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

### **Issues to be decided**

Is the landlord entitled to a monetary order for loss of income, damages and the filing fee?

### **Background and Evidence**

The tenant testified that on July 10, 2019, the parties entered into a tenancy agreement with an effective start date of August 01, 2019. A copy of the agreement was not filed into evidence. The parties agreed that the landlord handed over the keys of the rental unit to the tenants on July 10, 2019 to allow them to change the flooring and paint the walls. The monthly rent was \$2,500.00 and the tenants paid a deposit of \$1,250.00.

The landlord testified that he purchased the rental unit in June 2018 and did not make any changes or upgrades to the rental unit. He stated that the home was approximately 35 years old and that the flooring was the original flooring. The landlord did not know when the home was last painted.

The tenants stated that they started doing the work and found a lot of black mould. The tenants brought about \$500.00 worth of supplies to the rental unit and then decided not to move in due to the mould. On July 17, 2019, the tenants informed the landlord of their decision. They stated that they left their supplies behind. The landlord confirmed that he used those supplies to finish the work that was started.

The landlord found a new tenant for August 15, 2019 and is making a claim for loss of income in the amount of \$1,250.00. The landlord is also claiming \$835.00 to replace the flooring and \$1,200.00 to paint the unit.

### **Analysis**

Based on the sworn testimony of both parties and pursuant to section 16 of the *Residential Tenancy Act*, I find that the landlord and tenant had entered into a binding tenancy agreement on July 10, 2019, when they entered into a contract and the tenant paid a security deposit. Section 16 of the *Act* states that the rights and obligations of a landlord and tenant take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this case, the tenant entered into a tenancy agreement on July 10, 2019, for a tenancy that was supposed to start on August 01, 2019. Accordingly, the rights and obligations of a landlord and tenant took effect from the date the tenancy agreement was entered into. On July 17, 2019, the tenants informed the landlord that the rental unit was not suitable for them and they wished to end the tenancy. Therefore, I find that the tenant breached the tenancy agreement.

By providing notice on July 17, 2019, the earliest the tenant could have legally ended the tenancy was August 31, 2019. The landlord began looking for a new tenant and found one for August 15, 2019. The landlord is claiming the loss of income that he suffered for the first half of August.

*Residential Tenancy Policy Guideline #3* states that the 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. Therefore, I find that the landlord is entitled to the income that he lost for the month of August in the amount of \$1,250.00.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the painting of the interior of the unit and the flooring.

As per this policy, the useful life of interior painting is four years. The landlord did not have information of when the rental unit was last painted and therefore, I am unable to determine the remainder of the useful life of the painting as of the month of July 2019. Accordingly the landlord's claim for \$1,200.00 is dismissed.

As per section 40 of the *Residential Tenancy Policy Guideline* the useful life of the carpet is ten years. The landlord stated that the carpet was the original carpet of this 35-year-old home and therefore I find that the carpet had already outlived its useful life even before the tenancy started and would be required to be replaced at the landlord's cost. Accordingly, the landlord's claim for the cost of replacing the carpet is dismissed.

Since the landlord has proven a portion of his claim, I find that he is entitled to the recovery of the filing fee of \$100.00. Overall the landlord has established a claim of \$1,250.00 for loss of income plus \$100.00 for the filing fee for a total of \$1,350.00. I order that the landlord retain the security deposit of \$1,250.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance of \$100.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord a monetary order in the amount of **\$100.00**. The landlord may retain the security deposit of \$1,250.00.

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: November 15, 2019

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Residential Tenancy Branch