



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COAST WESTERN PROPERTY MANAGEMENT INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD, FFL

### Introduction

On May 13, 2020, the Landlord submitted an Application for Dispute Resolution seeking a monetary order for loss of rent; for damage and cleaning of the rental unit; to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee for the Application.

The matter was set for a conference call hearing. The Landlord's agent ("the Landlord") and the Tenant attended the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony. The parties testified that they have exchanged the documentary evidence before me.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

### Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to a monetary order for damage to the unit?
- Is the Landlord entitled to a monetary order for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit?

### Background and Evidence

The parties testified that the tenancy began on June 1, 2109, as a one-year fixed term tenancy to continue until May 31, 2020. Rent in the amount of \$3,950.00 was to be paid to the Landlord before the first day of each month. The Tenants paid the Landlord a security deposit of \$1,937.50 and an additional deposit of \$1,937.50.

The Parties testified that the Tenants moved out of the rental unit on April 28, 2020.

### Rent

The Landlord testified that the Tenants ended the fixed term tenancy one month early and he is seeking to recover a loss of May 2020 rent in the amount of \$1,025.00. The Landlord testified that he received \$2,925.00 for May 2020 rent from new Tenants and is seeking to recover the balance of the rent owing for May 2020.

The Landlord received written notice in March 2020 that the Tenants were ending the tenancy at the end of April 2020. The Landlord testified that they began advertising the rental unit for availability starting May 2020. The Landlord began advertising the unit on local websites for the same amount of rent owing under the tenancy agreement.

The Landlord testified that they were not getting responses to the advertisement, so when they met with an interested party in early April 2020, they negotiated a reduced amount of rent to be paid under the tenancy agreement.

In reply, the Tenants stated that they believe the Landlord recovered the full amount of rent for May 2020. The Tenants did not provide any specific reason or provide any documentary evidence to support their belief.

The Landlord provided a copy of a signed and dated letter from the new tenants which states that they moved into the rental unit on May 1, 2020 and paid rent of \$2,925.00.

### Painting

The Landlord testified that the walls of the rental unit were left significantly damaged at the end of the tenancy. The Landlord testified that the rental unit had been recently painted at the start of the tenancy. The Landlord testified that some ceilings and one wall was painted three to four years prior.

The Landlord explained that his claim is for the cost to repair damaged walls. The Landlord referred to photographic evidence showing the condition of the rental unit at the time the tenancy started and the condition at the time the Tenants moved out.

The Landlord provided a copy of a condition inspection report dated April 28, 2020 and signed by the Tenants. The condition inspection report indicates there were scuffs and marks present on some walls that required cleaning. The condition inspection report

provides that the Tenants agreed that the report fairly represents the condition of the unit.

The Landlord testified that he hired a contractor to make the repairs to the walls and is seeking to recover \$460.00 for materials and \$970.00 for labor costs for repairs and painting.

In reply, the Tenant testified that they have provided photographic evidence that shows there was no visible wall damage. The Tenant Ms. H.F.P. stated that she was present at the move out inspection and there was minimal wear and tear on the walls. The Tenants provided 18 photographs showing the rental unit at the end of the tenancy.

#### Cleaning Costs

The Landlord testified that the Tenant left the rental unit unclean at the end of the tenancy. The Landlord testified that the Landlord needed to clean the windows, blinds, appliances, and clean the walls. The Landlord testified that it took four people to clean the unit at a cost of \$25.00 per hour. The Landlord is seeking to recover the amount of \$775.00 for cleaning costs.

In reply, the Tenants stated that they received a checklist of things that require cleaning from the Landlord only 12 hours prior to moving out. The Tenant stated that the checklist included the cleaning of light bulbs and light fixtures and behind the stove.

The Tenant Ms. H.F.P. testified that she did extensive cleaning of the rental unit the day before moving out. The Tenants provided 18 photographs showing the rental unit at the end of the tenancy.

#### Dryer Knob

The Landlord is seeking \$45.00 for the cost of replacing a dryer timer knob that was found to be cracked at the end of the tenancy. The Landlord testified that the knob was not turning properly; it was slipping. The Landlord did not attempt to repair it.

In reply, the Tenants testified that they did not do any intentional damage to the dryer knob and that there was difficulty using it at the start of the tenancy.

#### Mattress

The Landlord is seeking \$130.00 towards the cost of a new mattress. The Landlord testified that a mattress was found to be torn at the end of the tenancy. The Landlord provided a photograph of the mattress. The Landlord testified that he purchased a new mattress at a cost of \$150.00. The Landlord is seeking to recover 4/5 of the replacement cost. The Landlord did not provide a receipt for the purchase of a new mattress.

In reply, the Tenant, Mr. N.B. testified that he was using the mattress. He testified that any damage to the mattress is normal wear and tear and pointed out that the tear is only one inch in length. He submitted that the mattress could have been sewn and did not affect its function and did not need replacement.

#### Drain Servicing

The Landlord is seeking to recover the cost of \$225.00 for having two drains serviced at the end of the tenancy. The Landlord testified that the drains were moving slow at the end of the tenancy. The Landlord hired a handyman service to service the drains. The Landlord provided an invoice for the service. The Landlord provided a copy of a cheque dated May 28, 2020 for payment to the handyman service.

In reply, the Tennst testified that when they moved into the rental unit the drains were not working properly. They testified that they notified the Landlord about the drains in the first four months of the tenancy.

In reply, the Landlord testified that he does not clearly remember the conversation.

#### Keys

The Landlord is seeking \$150.00 for the cost of re-keying a lock including the cost of five new keys. The Landlord testified that the Tenants returned five master keys; however, one key was bent. The Landlord testified that he could have a replacement key made using the other keys. He testified that he does not copy keys. The Landlord provided a photograph of a key.

In reply, the Tenants testified that they returned seven keys to the Landlord, and one key was bent.

#### Utilities

The Landlord testified that the Tenants failed to pay a hydro costs during the tenancy. The Landlord testified that the Tenants are responsible to pay 1/3 share of the hydro

costs. The Landlord testified that they never provided the Tenants with the hydro bill for May 2020.

In reply the Tenants testified that they never received an actual hydro bill from the Landlord until August 2020 after the tenancy had ended. The Tenants acknowledged that they owe the hydro costs being claimed.

#### Security Deposit \$1,937.50

The Landlord applied for dispute resolution on May 13, 2020. I find that the Landlord's application to retain the security deposit was made in compliance with timeframes contained within section 38 of the Act.

The Tenants testified that in addition to the security deposit of \$1,937.50 the Landlord is also holding a deposit in the amount of \$1,937.50.

The Landlord confirmed that he is holding deposits in the amount of \$3,874.50 and is seeking to retain the deposits in full or partial satisfaction of his claims.

#### Analysis

Section 7 of the Act states that 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.

The Residential Tenancy Branch Policy Guideline #3 Claims for Rent and Damages for Loss of Rent deals with situations where a Landlord seeks to hold a Tenant liable for loss of rent after the end of a tenancy agreement. The Guideline provides:

*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.*

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I make the following findings:

#### Rent

I find that the tenancy was a fixed term agreement and the Tenants are responsible to pay the rent until the end of the fixed term tenancy. I find that the Tenants vacated the rental unit prior to the end of the fixed term tenancy.

I find that the Landlord complied with his duty to mitigate against a loss or rent by advertising the rental unit for May 2020.

I have considered whether or not the Landlords decision to lower the rent to \$2,925.00 and claim the difference from the Tenants is reasonable. The Landlord received written notice from the Tenants in mid-March 2020 and began advertising the rental unit as available for May 2020 at the same monthly rent. In April 2020 the Landlord agreed to enter into a tenancy agreement with new tenants at a lower monthly rent.

I find that the Landlords actions were reasonable. If the Landlord had not entered into the new tenancy agreement, the Landlord may not have found a new Tenant and may have suffered a loss of \$3,950.00 for May 2020 rent. The Tenants would have been obligated to pay the full amount of rent owing for May 2020.

I award the Landlord the amount of \$1,025.00 for the loss of May 2020 rent.

### Damage

The Landlord provided the stronger evidence that the walls of the rental unit were left scuffed and marked at the end of the tenancy. I find that the marks are beyond normal wear and tear and I find that the Tenants are responsible for the cost to repair the walls and also repaint them.

I award the Landlord the amount of \$1,430.00 for the cost to repair and paint the unit walls.

### Cleaning

I find that the Landlord's evidence shows that some areas of the rental unit were left unclean such as the bathroom toilet and behind appliances. I find that the Tenants are responsible for leaving these areas of the unit unclean. However, I have also considered the Tenants' photographic evidence that shows areas of the rental unit were left in a reasonably clean condition.

I find that the Landlord's claim is inflated, and I find it is reasonable to award the Landlord a lesser amount for the Tenants' failure to clean some areas of the rental unit at the end of the tenancy.

I award the Landlord the amount of \$250.00 which amounts to 10 hours of cleaning at \$25.00 per hour.

#### Dryer Knob

The Landlords claim for compensation for a new dryer knob is dismissed. I find there is insufficient evidence from the Landlord to prove that the Tenants damaged the knob deliberately or as a result of neglect.

#### Mattress

The Landlords claim to recover compensation for the purchase of a replacement mattress is dismissed. The Landlord has a duty to minimize the damage or loss being claimed. There is insufficient evidence from the Landlord to prove that the mattress needed to be replaced rather than repaired.

#### Drains

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. The tenancy continued for 11 months and the rental unit was previously occupied by other Tenants. I find that the drains were not blocked; they were moving slow. The Tenants testified that they had informed the Landlord and the Landlord replied that he does not clearly remember the conversation. I find that the Landlord did not say the conversation never happened; he stated he does not clearly remember it.

I find that the drains were not blocked and that other occupants had previously been using the rental unit. I find that this is not a reasonable claim against the Tenants as there is insufficient evidence that the Tenants are responsible as a result of neglect.

#### Keys

The Landlord has a duty to minimize the damage or loss being claimed. I find that the Tenants returned seven keys to the Landlord. While the Landlord takes the position that the Landlord does not copy keys, and that the lock had to be re-keyed, with new

keys, I find that this is not reasonable. The Tenants returned all the keys and one was bent. The key was not missing which may have presented a security concern. I find no compelling reason why the bent key could not be copied.

The Landlord's claim for the cost to re-key a lock is dismissed.

#### Hydro Utility

I find that the Tenants are responsible under the tenancy agreement to pay hydro costs. The Tenants acknowledged at the hearing that they are responsible to pay the hydro costs.

I grant the Landlord the amount claimed of \$716.79 for unpaid hydro costs.

#### Security Deposit

I find that the Landlord applied against the security deposit within 15 days of the date the tenancy ended. The security deposit of \$1,937.50 and the additional deposit received of \$1,937.50 will apply to any monetary awards granted to the Landlord.

#### Filing Fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord had some success with his application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

#### Monetary Award

I find that the Landlord has established a total monetary award of \$3,521.69. I authorize the Landlord to keep the amount of \$3,521.69 from the deposits he is holding. I order the Landlord to return the balance of \$353.31 to the Tenants.

I grant the Tenants a monetary order in the amount of \$353.31. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

#### Conclusion

The Landlord was successful with some of the claims for compensation.



I order that the Landlord can keep the amount of \$3,521.69 from the deposits he is holding.

I order the Landlord to return the balance of \$353.31 to the Tenants and I grant the Tenants a monetary order in the amount of \$353.31.

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: October 7, 2020

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Residential Tenancy Branch