



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDCL, MNSD

### Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On November 26, 2020, the Landlords applied seeking a monetary order for unpaid rent; damage to the rental unit; for money owed or compensation for damage or loss; and to keep all or part of a security deposit.

On December 4, 2020, the Tenant applied seeking the return of a security deposit and/or pet damage deposit.

The matters were set for a conference call hearing. The Landlord and Tenant attended the hearing. I introduced myself and the participants. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present oral testimony and to make submissions during the hearing.

The parties confirmed that they had exchanged the documentary evidence that I have before me. 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

- Are the Landlords entitled to a monetary order due to damage to the rental unit?
- Are the Landlords entitled to a monetary order due to unpaid rent?
- Are the Landlord entitled to a monetary order due to money owed or compensation for damage or loss?
- Is the Tenant entitled to the return of a security deposit and pet damage deposit?

### Background and Evidence

The Landlord and Tenant testified that the tenancy began on November 1, 2018 on a month to month basis. Rent in the amount of \$1,300.00 was due to be paid to the Landlord by the first day of each month. The tenancy agreement required the Tenant to pay 20% of utility costs. The Tenant paid a security deposit of \$650.00 and a pet damage deposit of \$100.00 to the Landlord. The Tenant testified that the tenancy ended on October 31, 2020. The Landlord testified that the tenancy ended on November 3, 2020.

### Landlord's Application

The Landlord is seeking compensation for the following items:

#### Rent

The Landlord is seeking to recover November 2020 rent. In the amount of \$1300.00. The Landlord testified that the Tenant did not pay the rent due for November 2020 and on November 3, 2020 the Landlord discovered that the Tenant had moved out of the rental unit.

The Landlord testified that the Tenant did not give proper written notice to end the tenancy. The Landlord did not rent the unit out for the month of November 2020 and received no rent income for November 2020.

The Tenant testified that she did not give the Landlord proper written notice to end the tenancy. She testified that she had informed the Landlord that she would be looking to move out. She testified that her children were getting sick from mold in the rental unit. She provided testimony that she did not pursue an application for dispute resolution seeking repairs against the Landlord.

#### Unpaid Utility Bills

The Landlord is seeking \$484.03 for unpaid hydro/ gas and garbage bills. The Landlord testified that the Tenant owes \$242.03 for September 2020 and \$242.00 for October 2020. The Landlord testified that she gave a copy of the actual bills to the Tenant, but the Tenant did not pay her portion.

In reply, the Tenant testified that she made a cash payment of \$132.00 to the Landlord's wife. The Tenant testified that she paid the Landlord's wife in cash for utilities and rent

and the Landlord would provide her with a receipt when the male Landlord arrived home. The Tenant testified that the Landlord did not issue her a receipt on this occasion. The Tenant wants the amount of the Landlords utility claim reduced by the amount of the \$132.00 cash payment.

In reply, the Landlord stated that he does not think his wife received the cash payment. The Landlord provided testimony that the Tenant did previously pay cash to his wife and that he would then issue a receipt. The Landlord did not have his wife present at the hearing to provide testimony regarding payments.

### Damage

The Landlord testified that the Tenant is responsible for damage to the rental unit. The Landlord stated that there was paint damage and damage to the wood floor. The Landlord is seeking to be compensated for 45 hours of work at an hourly rate of \$20.00.

The Landlord testified that he painted the walls and repaired the wood transition strips. He testified that he repaired scratches on the walls by using drywall compound.

The Landlord testified that the front door base/ landing was broken. He testified that he nailed and glued a board back down.

The Landlord provided photographs of the rental unit. The Landlord did not provide any receipts for material other than paint.

In reply, the Tenant testified that the Landlord failed to conduct a move in inspection and complete a condition inspection report at the start of the tenancy. The tenant testified that there were dings in the walls and the floor transition strips were loose. The tenant testified that she had to glue and nail down the boards at the front door entry during the tenancy.

The Tenant testified that there were a few dings in the walls caused by a rocking chair hitting the wall and there were stickers on a wall from children being children.

In reply the Landlord confirmed that the Landlord did not conduct a move in inspection with the Tenant and complete a condition inspection report. The Landlord testified that his wife showed the unit and it was in good shape.

### Cleaning Costs.

The Landlord testified that the Tenant left the rental unit unclean at the end of the tenancy.

The Landlord is seeking compensation of \$650.00 for their cost to clean the rental unit. The Landlord stated that a cleaning company quoted him \$650.00 to clean the rental unit. The Landlord testified that it took both him and his wife 8 or 9 hours to clean the rental unit. The Landlord is seeking \$18.00 an hour for 18 hours of cleaning. The Landlord provided photographs of the rental unit after the Tenant moved out.

The Tenant testified that she did not leave the rental unit unclean and that everything was cleaned. She stated that she did forget about some food left in the refrigerator and cupboard.

#### Security Deposit

On November 26, 2020 the Landlord applied for dispute resolution and requested to keep the \$650.00 security deposit and \$100.00 pet damage deposit he is holding in partial satisfaction of his claims. The Landlord testified that he received the Tenant's forwarding address in December 2020 when he received the Tenant's Notice of Dispute Resolution Proceeding.

The Tenant confirmed that the Landlord received her forwarding address within the Notice of Dispute Resolution Proceeding document. She confirmed that the Landlord has not returned any amount of the deposits.

#### Tenant's Application

##### Security Deposit

The Tenant is seeking the return of the \$650.00 security deposit and \$100.00 pet damage deposit \$400.00 held by the Landlord.

#### Analysis

The party making a claim for compensation against another party bears the burden of proof. Section 7 of the Act provides that if a Landlord or Tenant does not comply with the Act, the regulations, or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results.

To be successful with a claim for compensation an applicant must prove:

1. That the other party breached the Act, regulation, or tenancy agreement.
2. That the breach caused the party making the application to incur damages or loss as a result of the breach.
3. The value of the loss; and,
4. That the party making the claim took reasonable steps to minimize the damage or loss.

Sections 23 and 35 of the Act provides 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. Each section also requires that the Landlord complete the condition inspection report; both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

Section 24 (2) of the Act provides that the right of the Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord having does not offer the Tenant opportunities for an inspection and complete an inspection report in accordance with the regulations.

Section 26 of the Act provides that a Tenant must pay rent when it is due under the tenancy agreement, whether or not the Landlord complies with this Act, the regulations or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Residential Tenancy Policy Guideline # 3 Claims for Rent and Damages for Loss of Rent provides the following information:

*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.*

Section 72 of the Act provides that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

Based on the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

### November 2020 Rent

I find that the tenancy agreement requires the Tenant to pay rent of \$1,300.00 each month. I find that the Tenant moved out of the rental unit without providing the Landlord with proper written notice to end the tenancy as required under the Act. I find that the Tenant's concern with mold was not proven to be a legal reason to vacate the rental unit without giving proper notice. I find that the Tenant is responsible to pay the rent up to earliest date the tenancy could have legally ended, which is November 30, 2020. I find that the Landlord was not obligated to find a new tenant for November 2020 and the Landlord suffered a loss of rent in the amount of \$1,300.00.

I grant the Landlord a monetary award of \$1,300.00.

### Utility Bills

I have reviewed the tenancy agreement and I find that rent does not include the cost of water, electricity, or gas. I find that the tenancy agreement requires the Tenant to pay for 20% of these utility costs.

I have reviewed the utility bills provided by the Landlord. I find that the Tenant owes \$16.62 for Gas costs; \$120.15 for electricity costs; and \$131.85 for water costs.

With respect to the Tenant's submission that she made a cash payment of \$132.00 to the Landlord's wife, I note that the amount the Tenant indicates she paid happens to be the amount owing for the Tenant's portion of a September 30, 2020 water utility bill. The Landlord confirmed that the Tenant would make cash payments to the Landlord's wife and he would later provide a receipt to the Tenant. I note that neither party provided copies of rent or utility payment receipts in their documentary evidence. I found that Tenant's testimony on this issue to be straight forward and credible. I note that the Landlord provided testimony stating, "*I don't think my wife received it*". The Landlord's testimony left a measure of doubt and the Landlord was asked if his wife was available to provide direct testimony; however, she was not available.

The burden of proof rest with the applicant/ Landlord. With respect to the amount of compensation the Tenant owes to the Landlord for utility payments, the Landlord has provided insufficient evidence to prove that the Tenant never paid the \$132.00 to the Landlord's wife.

I find that the Landlord is entitled to compensation of \$16.62 for Gas and \$120.15 for electricity for a total amount owing of \$136.77.

### Damage

I find that the Landlord failed to conduct a move in inspection and complete a condition inspection report and provide a copy to the Tenant at the start of the tenancy. A properly completed inspection report is considered to be evidence of the state of repair and condition of a rental unit at the start of a tenancy.

The Tenant testified that there were dings in the walls and an issue with the transition strips and door landing at the start of the tenancy. I find that the Landlord does not have sufficient evidence to prove the condition of walls and flooring at the start of the tenancy. The Landlord bears the burden of proof that the Tenant is responsible for the damage. Photographs showing damage at the end of a tenancy is not proof they were in good condition at the start of a tenancy.

I note that if the transition strips and / or floor landing boards came loose during the tenancy through no negligence / fault of the Tenant, it is the Landlord's obligation to maintain and repair these items.

Since the Tenant acknowledged she is responsible for a few wall dings and stickers on the wall, it is reasonable to award a nominal amount to the Landlords. I award the Landlord \$75.00 for the cost to repair the wall dings, remove the stickers and paint the area.

### Cleaning

The parties provided conflicting testimony on the cleanliness of the rental unit at the end of the tenancy. Since there is no condition inspection report, I have reviewed the photographic evidence. I find that the Tenant is responsible for leaving the rental unit unclean; however, the evidence does not establish that the rental unit required 18 hours of cleaning. I find that the fridge and stove required cleaning and also a laundry area floor and closet. I find that the Landlord's claim is inflated, and I award a lesser amount of compensation for cleaning costs. I award the Landlords six hours of cleaning at \$18.00 per hour for a total of \$108.00.

### Security Deposit

I find that the Landlord applied against the security deposit and pet damage deposit within 15 days of being aware of the Tenants forwarding address.

I find that the Landlords failed to conduct a move in inspection and complete a report and therefore has extinguished their right to apply against the deposits for damage. However, the Landlord is awarded a monetary order for unpaid November 2020 rent. In accordance with section 72 of the Act, I authorize the Landlord to keep the security deposit and pet damage deposit of \$750.00 towards the unpaid rent.

Section 72 of the Act also gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords were partly successful, I order the Tenant to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$1,719.77 comprised of \$1,300.00 in unpaid rent; \$136.77 in unpaid utilities; \$183.00 for damage and cleaning costs; and the \$100.00 fee paid by the Landlords for this hearing.

After setting off the security deposit and pet damage deposit of \$750.00 towards the award of \$1,719.77 I find that the Landlord is entitled to a monetary order for the balance of \$969.77. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

### Conclusion

The Tenant failed to give proper notice to end the tenancy and the Landlord suffered a loss of rent. The tenant owes the Landlord for a loss of November 2020 rent. The Tenant is also responsible for minor damage to the unit and cleaning costs.

The Landlords are authorized to keep the security deposit of \$650.00 and the pet damage deposit of \$100.00 in partial satisfaction of their claims.

The Landlord is granted a monetary order for the balance of \$969.77.



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: April 7, 2021

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Residential Tenancy Branch