



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This was the hearing of an application by the tenants for a monetary order. The hearing was conducted by conference call. The tenants and the landlord participated in the hearing and I heard from the landlord's witness.

### Issues(s) to be Decided

Are the tenants entitled to the return of their rent payment for July, 2010?

### Background and Evidence

The rental unit is a basement suite. The tenants learned that the unit was for rent through an advertisement. They viewed the unit in mid-June, 2010. When they saw the unit the former tenants were still living there. The tenants met the landlord at the rental unit on June 28, 2010. By this time the suite was vacant, but the testified that that the former tenants had not cleaned when they moved out and the landlord had not cleaned the unit. The tenants said that they prepared a list of cleaning and some repairs that they considered necessary. I was not provided with the list, but the landlord agreed that cleaning was needed and a list was prepared. The tenants gave the landlord a security deposit and the first month's rent. According to the tenant the rent paid was \$850.00 although in the application the tenants claimed payment of \$950.00.rent. The tenants left a few items of furniture in the rental unit. They returned on July 1, 2010 to move in. The tenants said that the rental unit had not been cleaned; the carpet, in particular was unclean and repairs, including replacement of the toilet seat had not been done although a new toilet seat had been left in the rental unit. The

landlord said that for various personal reasons she was unable to deal with the cleaning. She told the tenants that she would reduce the rent by \$100.00 if the tenants looked after the cleaning, including the carpet cleaning. The tenants decided that the rental unit was too dirty and that they would not move in. They removed their few items of furniture and requested their deposit and rent. According to the landlord the tenants changed their minds about moving in and chose to stay at the mother's house instead.

The landlord testified that she succeeded in re-renting the unit for August. It is her position that she is entitled to retain the rental payment because the tenants changed their minds and breached the tenancy agreement. According to the landlord's witness he was present at the rental unit on July 1, 2010. He testified that he was in another room when the tenants were in the rental unit. He said that he overheard the tenant's mother telling the tenants that they did not have to move into the rental unit and they could live with her.

The tenants testified that on July 1, 2010 when they saw that the rental unit had not been cleaned the tenant's mother told them that they did not have to move into a dirty apartment; they could come and live with her. The tenants testified that the landlord told them that because of her personal problems she was too busy to clean the rental unit and offered to reduce the rent by \$100.00 if the tenants did the necessary cleaning. The tenants did not accept the proposal. The landlord returned the tenants' security deposit after the tenants returned the keys to her. She said that she found new tenants after a month and the new tenants were happy with the rental unit. The landlord said that she did have the rental unit cleaned and the carpets cleaned before she rented it to new tenants.

### Analysis and Conclusion

When the tenants made their initial inspection of the rental unit it was occupied and the tenants were not in a position, before the former tenants moved out, to assess the cleanliness of the rental unit.

I find that when the tenants met the landlord at the rental unit on June 28, 2010 they made a list of cleaning and repairs that they considered essential. The tenants testified that the landlord acknowledged the listed items by signing the list.

When the tenant arrived to move in on July 1, 2010 no cleaning had been done. It was the landlord's obligation to ensure that the rental unit was suitable for occupation at the commencement of the tenancy. The fact that these problems arose and the landlord sought to avoid her obligations on the first day of the tenancy was a valid reason for the tenants to have second thoughts about the wisdom of continuing with the tenancy. I find that the tenants were not obliged to accede to the landlord's proposed rent reduction in return for performing the landlord's cleaning obligations. I find that the tenants were entitled to repudiate the tenancy agreement and demand the return of their rental payment because the landlord failed to perform the cleaning that she acknowledged was necessary.

I grant the tenants' application and grant a monetary order in the amount the tenants stated at the hearing that they paid for the first month's rent, namely: the sum of \$850.00. The tenants did not pay a filing fee for their application and I make no order with respect to costs. I grant the tenant an order under section 67 in the said amount. This order may be registered in the Small Claims court and enforced as an order of that court.

Dated: December 07, 2010.

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