



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MND MNR MNSD FF

### Introduction

This hearing convened for 90 minutes on January 26, 2011, and reconvened for the present session on February 17, 2011 for 60 minutes. This decision should be read in conjunction with my interim decision of January 28, 2011.

I confirmed with the Witness that he had provided testimony during the January 26, 2011. I asked the Witness to disconnect from the teleconference hearing and to leave me his telephone number in case I needed to bring him back into the hearing, pursuant to #11.11 of the *Residential Tenancy Branch Rules of Procedure*. The Witness was not brought back into the hearing.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Landlord met the burden of proof for monetary compensation as a result of this breach?

### Background and Evidence

The Tenant testified that he served the Landlord and the *Residential Tenancy Branch* with the exact same documents therefore the Landlord would have been served a copy of the letter from his bank.

In response to the Landlord's Agent's testimony he argued that he did not hire a moving company to move him. He had two friends with a van who moved him. When the Agent attended the rental unit he asked him to provide him with a letter saying he was not moved out yet because the Agent was not into working that day. He asked how the Agent would know if he was not moved yet because the Agent did not go inside the rental unit August 1, 2010. He contends that he had moved and needed to finish

cleaning the unit. He had completely vacated and cleaned the property by noon on August 1, 2010.

He then provided opposing testimony to what the Landlord had stated in the previous hearing. He argued the Landlord had the means to reach him as his telephone number remained the same as did his work location. He was only in his unit for three months before his witness moved into the building. He took offense to the Landlord questioning the credibility of his witness as he is not his "drinking buddy". He confirmed there was a fire on his bed but that it was caused by a pan and a plate of hotdogs. The fire was contained to a one foot area which caused smoke damage and damage to his comforter. He stated that if the smoke detector worked this would not be an issue.

He believes the Landlord tricked him into signing the mutual agreement to end the tenancy as he was under the impression he was required to find a new place to live as soon as possible and to move out before the end of the two months. He states there was no conversation about having to pay August rent and the Landlord told him it was okay to move out as soon as possible. He stated the Landlord said it was okay to move out early if he wrote it out on a piece of paper. Once he did that and signed the paper the Landlord wrote a date under his signature. He does not know if this was the correct date he wrote the letter. He stated that if he had to pay for August rent he would be allowed to stay in the unit until August 31, 2010. He noticed the "for rent" sign was still posted when he vacated the unit August 1, 2010.

He paid to have the tiles put in the rental unit himself as the Landlord refused to repair the unit and always said he rented it "in as is condition". He did not ask for permission prior to installing the tiles and he did not ask the Landlord to pay for them.

He confirmed his witness fixed the toilet however he did not request to replace it because of the crack because they know the Landlord would only fix what was in the "critical path". Again, the Landlord rented the unit "in as is condition".

The Tenant argued the door frame and entrance were compromised several years prior to his tenancy and they were made to look like they were okay at the time of the move-in inspection. Over time the area began to show the actual condition it was in.

He confirmed he removed the carpet from his bedroom without prior permission from the Landlord. He states he knew the Landlord would not do anything about the condition of the carpet, so he removed it hoping the wood floor underneath would be in better condition than what it was.

The Tenant questioned the amount of paint the Landlord is claiming for. He advised the rental unit is only 600 to 650 sq ft so there is no way the painter would require that much paint. He states the unit was not painted prior to his move in.

He stated the photos indicate the condition of the bathroom caulking. He acknowledged that the fridge freezer would often leak water when it thawed periodically and that he had reported this to the Landlord. It is this leak that caused the mold under the fridge. He confirms he removed the kitchen cupboard, without the Landlord's permission, and put it in the laundry room which another tenant took and put in their unit. He also noted there was duct tape over holes in the wall because mice were gaining entry into his unit through these holes. He acknowledges that he is responsible for the couch which he left in the alley; however the other articles were removed by him prior to the Landlord having the couch removed.

He advised the Landlord attempted to cash his August 1, 2010 post dated rent cheque but he had already put a stop payment on his rent cheques. Then on September 1, 2010 the Landlord went to an inexperienced teller who cashed his September 1, 2010 cheque even though he had placed a stop payment on it. The young teller was responsible for the money and has since lost her job as a result of this.

The Tenant stated that he is of the opinion that the Landlord is taking advantage of him to renovate the rental unit. The Landlord has \$1,400.00 of his between the September 1, 2010 cheque of \$970.00 that he cashed, which had a stop payment on it, plus his \$430.00 security deposit. He confirmed again that he was in attendance when the move-in inspection report was completed and he did sign the document.

The Landlord stated the Tenant's testimony confirms he did not move out of the unit until August 1, 2010 when he should have been out by July 31, 2010 based on his notice. It also confirms the Tenant indicated to his Agent that he was not finished as he still had to clean the unit.

He had discussions with the Tenant about his attendance at a move-out inspection and it was evident that the Tenant had no intention of attending. He followed the Act by posting the final notice of inspection on the door on August 2, 2010. He did attempt to call the Tenant however there was never any answer.

The Landlord stated that he could only speculate that the Tenant removed the carpet because of fire damage as the photo of the floor displays what appears to be a burn from a fire.

In closing the Landlord confirmed they had a mutual agreement to end the tenancy and the Tenant unilaterally decided to end the tenancy earlier without his agreement. The Tenant did not return the keys to the Landlord but he left some in the unit on the window ledge and returned another one a couple of days later when it was slid under his office door. He wanted to point out that there is no indication of damage to the door frame listed on the move-in inspection report.

He believes the Tenant breached the tenancy agreement and the Act for the following reasons:

- Proper notice to end the tenancy was not given;
- The Tenant must have consent before altering the property and yet he made several changes to the unit without the landlord's permission;
- He did not keep the unit clean;
- The Tenant had a habit of disconnecting the smoke detector;
- There was evidence of nicotine on the walls inside the unit and this was a non-smoking unit;
- The Tenant did not move out on July 31, 2010 and over held until August 1, 2010;
- The Tenant indicated he had no intention of attending the move-out inspection.

The Landlord had serious concerns that the Tenant was going burn down the building. The Tenant has agreed to be responsible for the fire damage and for leaving furniture outside. He had attempted his best to have the Tenant follow the rules however he continued to do his own thing.

The Tenant stated that he feels he followed the rules and that the Landlord has stated many untruths.

### Analysis

Based on the foregoing, I have carefully considered the relevant testimony, photographic evidence and written submissions provided by each party. In particular I have given more weight to the move-in inspection report as both parties signed and agreed to the condition of the unit as of February 1, 2007, the date the form was completed and signed.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage

or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 32(3) of the Act provides a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 32 (1) of the Act provides a landlord must provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I note that there is no provision in the Act that allows a landlord to rent a property in "as is condition" and be excused from the obligations of Section 32 (1).

The evidence supports the following: (a) the Tenant had two fires in his rental unit during the course of his testimony which caused smoke damage, (b) the Tenant removed the bedroom carpet and kitchen cabinet without the Landlords permission, (c) the toilet was cracked, and (d) on July 2, 2010, the parties signed a mutual agreement to end the tenancy August 31, 2010 and on July 16, 2010, the Tenant provided the Landlord written notice to end the Tenancy July 31, 2010.

Based on the aforementioned I find the Landlord has met the burden of proof that the Respondent Tenant violated the Act, Regulation, or tenancy agreement; the violation(s) resulted in damage or loss to the Applicant Landlord; and the Applicant Landlord did whatever was reasonable to minimize the damage or loss.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item. Therefore I award the Landlord as follows:

- 1) The normal useful life of carpets in accordance with the *Residential Tenancy Policy Guidelines* is ten years. In this case the Landlord was not able to provide evidence of the age of the carpet that was removed however responded on several occasions that the unit was rented in “as in condition”. There is no mention of the condition of the carpet in the move-in inspection report. Given the age of the unit and the décor displayed in the photographs I find on a balance of probabilities that the carpet was older than its useful life of 10 years. Therefore I award the Landlord a nominal amount to replace the carpet of **\$75.00** (1/2 of the labour costs to install the carpet).
- 2) The normal useful life of door frames in accordance with the *Residential Tenancy Policy Guidelines* is twenty years. The evidence supports this door frame was “old” and potentially an original door frame over sixty years old. There is no mention of damage to the door jamb on the move-in inspection report however there was opposing testimony that the door frame was painted to appear undamaged. I accept that the door jamb suffered damage during this tenancy that was over and above normal wear and tear. As the normal useful life of the jamb has been surpassed I decline to award compensation for the materials used. The evidence does not provide an actual amount of time spent to replace door jamb therefore I award a nominal amount for the labour in the amount of **\$100.00** (4 hours x \$25.00/hr).
- 3) The evidence supports the unit required extensive cleaning, a total of 19 hours (2 men for 8 – 10 hours each), as a result of the smoke and fire damage and cleaning of appliances. I note that the Agent's written invoices differ from the Agent's testimony for the amount of time it took to clean the unit. Therefore, in the presence of this contradiction, I approve the claim for cleaning costs for a nominal amount of **\$285.00** (19 hours x \$15.00/hr).
- 4) The Landlord claims the previous tenant painted the walls in this unit just prior to this tenancy; however the Tenant provided opposing testimony that the unit was not painted prior to his move in. The move-in inspection report indicates that for almost every room there are marks on walls or damaged paint and this is as of February 1, 2007. Therefore, in the absence of documentary evidence, I find on a balance of probabilities that the walls in this unit had not been painted for some time prior to February 1, 2007, and that the ceilings would not have been painted for a much longer period. The normal useful life of interior paint (wall or ceiling) in accordance with the *Residential Tenancy Policy Guidelines* is four years. Therefore I find this unit would have required painting at the Landlord's expense by the time this tenancy ended and I hereby dismiss the Landlords claim for any costs relating to the purchase of supplies, paint, and labour to paint the unit, without leave to reapply.

- 5) The normal useful life of a toilet in accordance with the *Residential Tenancy Policy Guidelines* is twenty years. The Landlord testified that he did not know the age of the toilet and confirmed it was in the unit when he purchased the building. Based on the photographs and the facts that several pieces of this toilet had to be replaced during the tenancy I have determined based on a balance of probabilities that this toilet is approximately 15 years old. After considering the location of the crack in the toilet I find there to be insufficient evidence to support the toilet was cracked as a result of the Tenant's breach. On a balance of probabilities I have determined the damage to be caused by normal wear and tear. Therefore I dismiss the Landlord's claim of \$537.32, without leave to reapply.
- 6) The Landlord has sought \$100.00 for an estimated cost to replace a kitchen cabinet that was removed by the Tenant. The evidence supports this cabinet has not been replaced therefore the Landlord has not yet suffered a loss and can he cannot provide evidence of the actual cost of his loss. Based on the aforementioned I find there to be insufficient evidence to support this claim and it is dismissed without leave to reapply.
- 7) The testimony refers to the Landlord's claim for costs incurred to remove a couch and other materials however there is no evidence of an amount being claimed or the actual amount of the loss. Therefore I dismiss this claim without leave to reapply.

Section 45 (1) of the Act provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement. Therefore in this case if the Tenant wanted to end his tenancy on July 31, 2010 his notice would have to be received by the Landlord no later than June 30, 2010. His written notice was received by the Landlord July 19, 2010; therefore his notice would be effective August 31, 2010. The Tenant vacated the property August 1, 2010 and the unit was not re-rented until September 1, 2010 causing the Landlord to suffer a loss of rent for the month of August 2010.

The Landlord initially deposited the August 1, 2010 rent cheque which caused him to suffer a bank charge of \$7.00 dollars when the cheque was returned, as supported by the evidence. Therefore I approve the Landlord's claim of \$7.00 pursuant to section 7 of the regulations.

The evidence supports the Landlord cashed a post dated cheque September 1, 2010 to recover the August 2010 rent. While I do not make judgment on the Landlord's actions

of cashing a post dated cheque dated for a period after the tenancy had ended, I find he has received compensation for the August 2010 rent; therefore I do not award recovery of the amount claimed.

The Landlord been partially successful with his claim; therefore I award recovery of \$25.00 of the filing fee from the Tenant.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Carpet replacement	\$75.00
Extensive cleaning of the rental unit	285.00
Bank fee of returned cheque	7.00
Filing fee	<u>25.00</u>
Subtotal (Monetary Order in favor of the landlord)	<b>\$492.00</b>
Less Security Deposit of \$430.00 plus interest of \$12.48	- 442.48
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$49.52</b>

### Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$49.52**. The order must be served on the respondent and is enforceable through the Provincial Court and as an order of that Court.

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: February 18, 2011.

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Residential Tenancy Branch