



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the male landlord and both tenants.

During the hearing and based on evidence provided at the hearing the landlord amended his application to exclude any compensation for hydro charges and reduced his overall claim by the amount he had claimed for hydro (\$132.42) and an additional \$42.89 for a total amended claim of \$2,218.69

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; unpaid utilities; damage and clean up; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenancy began on July 1, 2010 as a 1 year fixed term tenancy for the monthly rent of \$1,250.00 due on the 1<sup>st</sup> of each month. A security deposit of \$625.00 and a pet damage deposit of \$100.00 were paid. The tenancy ended after the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on November 17, 2010 that had an effective date of November 28, 2010.

Part of the landlord's application includes compensation for deck repair and stairs and water usage for a total of \$149.58, the tenants do not dispute these amounts.

The landlord seeks the additional following compensation:

Description	Amount
Cleaning – 16 hours @\$25.00 per hour	\$400.00
Front window replacement (including labour)	\$462.00
December 2010 rent	\$1,250.00
Less – hydro adjustment	(\$42.89)
<b>Total</b>	<b>\$2,154.89</b>

The landlord provided a copy of a move out Condition Inspection Report that was unsigned by the tenants but completed on December 2, 2010. Generally, the report indicates carpets had not been cleaned; in some rooms the walls and trim had not been cleaned; the oven was “dirty with food”; and that in the yard dog feces.

The landlord also submitted undated photographs showing a dirty oven; furniture and dogs in the house and in several rooms the floors have dog feces on them; and furniture and garbage in the front yard. The tenants provided undated photographs showing the rental unit empty of any furniture or dog feces.

The tenants contend pictures submitted by the landlord were taken the day prior the completion of their move out. The landlord did not address when his pictures were taken.

The landlord is seeking December 2010 rent from the tenants as stated in his application: “move out date Late December 2<sup>nd</sup> preventing our new renters for month of December.” The landlord provided no testimony or evidence that he had entered into a new tenancy agreement with any party for December 1, 2010. The landlord did testify that he re-rented the unit by mid January, 2011.

The landlord asserts that a window broke as a result of the tenants placing plant pots on the window sill. The landlord provided photographs showing the window with plants on the sill and vertical crack in the window. The tenants contend the pots were small plastic pots and carried no significant weight, sufficient to cause any stress on the window.

### Analysis

I accept that the parties agree the tenants are responsible for deck repairs and water usage for a total of \$149.58.

As both parties have submitted undated photographs into evidence that show different conditions of the rental unit, I find that I am not able to rely on those documents as evidence of the condition of the unit.

However, the landlord has submitted copies of the condition inspection report that do not indicate anywhere that there was dog feces left in the house. In addition under the section entitled "Exterior" on the report the landlord has marked that the grounds and walks are dirty and has indicated only dog feces has a problem. The report does indicate the oven was "very dirty with food".

As these descriptions are incongruent with the photographs provided by the landlord, I accept the tenant's assertion that the photographs relied upon by the landlord do not accurately reflect the condition of the rental unit after the tenants vacated the unit. As a result, I find the landlord has failed to substantiate his claim for any cleaning and I dismiss that portion of the landlords' application.

In relation to the broken window, I am not persuaded by the landlord's testimony that the window broke as a result of plant pots on the sill. I accept the tenant's assertion that the pots pictured in the window do not carry any significant weight and could not possibly have caused the vertical crack in the window, taking into consideration the age of both the house and the single pain window.

As such, I find the landlord has failed to establish the tenants are responsible for the break in the window and I dismiss that portion of the landlord's application.

As to the landlord's claim that by vacating the rental unit after the effective date of the Notice to End Tenancy and in fact after December 1, 2010 the landlord suffered a loss because the tenants prevented his new renters for December, I find the landlord has failed to establish that he had found new renters who were expected to move in on December 1, 2010 and that they subsequently did not move in after these tenants had vacated.

If the landlord had not found renters for December 1, 2010 he cannot hold the tenants responsible for loss of that revenue if they vacated the rental unit on a day or two beyond the start of the month as the landlord had no expectation of revenue for December after the landlord had ended this tenancy by issuing a 10 Day Notice to End Tenancy.

However, as the tenants did not vacate prior to the 1<sup>st</sup> of the month despite the effective date of the notice to be vacated by November 28, 2010, I find the tenants were overholding and as such are responsible for a per diem rate of rent for the two days in December 2010 in the amount of \$80.65.

### Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$187.34** comprised of \$149.58 deck repairs and water usage and \$80.65 per diem overholding; less \$42.49 the landlord's hydro adjustment noted above.

As the landlord was mostly unsuccessful I dismiss the portion of his application to recover the filing fee of \$50.00 from the tenants.

I order the landlord may deduct this amount from the security deposit and pet damage deposit held in the amount of \$725.00 in satisfaction of this claim and order the landlord to return the balance of the deposits to the tenants in the amount of \$537.66.

I grant a monetary order to the tenants in the amount of **\$537.66**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced 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: March 24, 2011.

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Residential Tenancy Branch