



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MND MNR MNSD MNDC FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial compensation of the monetary claim. Two landlords, one tenant and three witnesses for the tenants all participated in the teleconference hearing.

### Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy began on February 28, 2010, with monthly rent in the amount of \$890 payable in advance on the first day of each month. On January 25, 2010, the tenants paid the landlord a security deposit of \$445. On that same date, the landlord and tenants completed a move-in inspection and signed the condition inspection report.

In July 2010, the landlord began renovating the house. In a dispute resolution decision dated November 18, 2010, the tenants were granted a rent reduction of \$150 until such time as renovations were complete or a dispute resolution officer ordered the rent reduction to end. In a further dispute resolution decision dated January 11, 2011, it was found that the tenancy ended on December 31, 2010.

The landlord has applied for monetary compensation for the following:

- 1) \$90 in outstanding rent for December 2010 – the tenants granted reductions in rent that allowed them to deduct a total of \$800 from their December 2010 rent, so the outstanding balance totalled \$90.
- 2) \$890 for January 2011 rent – the tenants gave notice on December 5, 2010 that they would be vacating the rental unit by December 31, 2010. However, the tenants had also applied for and been granted a review hearing of a decision

granting the landlord an order of possession, and the review hearing was not scheduled until January 11, 2011. The landlord did not know if the tenants had vacated the rental unit by December 31, 2010, because the Christmas lights were still on, and the tenants had not returned the keys. The landlord did not know until January 11, 2011, the date of the review hearing, that the tenants had in fact vacated the unit.

- 3) \$345 for 15 hours of cleaning, at \$23 per hour – the tenants did not properly clean the rental unit at the end of the tenancy. The landlord provided photographs of the condition of the rental unit at the end of the tenancy, and an invoice for cleaning.
- 4) \$150.24 for carpet cleaning – the tenants did not professionally clean the carpets
- 5) \$20.78 for rekeying the locks – the tenants did not return the keys, so on January 11, 2011 the landlord changed the locks in the rental unit.
- 6) \$80 for four late payment fees of \$20 each for late payment of rent in October, November and December 2010 and January 2011.
- 7) \$75 for three NSF cheques – the tenancy agreement indicates a rate of \$35 for each NSF cheque, but the landlord reduced their claim to \$25 per month, in accordance with the Act.
- 8) \$16.79 for a dimmer switch – the dimmer switch in the kitchen was broken and needed to be replaced
- 9) \$5.03 for tub paint – there was a chip on the edge of the bathtub, which the landlord painted over
- 10) \$34.99 for a smoke alarm – the tenants took a smoke alarm from the bedroom
- 11) \$52.64 for recycling – the tenants left junk behind, and the landlord had to pay to dump it.

The landlord also applied for recovery of their \$50 filing fee for the cost of this application, \$31 for the cost of an affidavit, \$50 for recovery of the filing fee on a previous application and \$13.01 for the costs of registered mail.

The tenants' response to the landlord's claims was as follows. The outstanding amount for December 2010 would be \$90, but the tenants felt they should not have to pay that amount because they vacated the unit at the beginning of December. They could not live there because the landlord did not provide what a landlord is supposed to provide. The tenants should not have to pay any rent for January 2011 because they gave their notice. The tenants put the keys in the landlord's mailbox, and when they later checked the keys were gone, so the landlord must have received them. The tenants therefore should not have to pay for the cost of re-keying.

The tenants acknowledged that they did not have the carpets professionally cleaned, but they cleaned everything else, and removed all of their possessions. Two of the tenants' witnesses gave testimony that they had known the tenants for several years and the tenants were very clean, tidy people. The third witness for the tenants testified that he helped the tenants with some of their moving, and renovations were still ongoing on the property. The tenants dispute the landlord's claims for cleaning as well as for hauling away junk in the yard, which they said was not theirs. They questioned the landlord's photographs, as too much time had elapsed between the time the tenants moved out and the time the photos were taken.

The tenants also disputed the claims for a dimmer switch, which they stated was not damaged at the end of the tenancy, tub paint, as the tenants did not do the damage to the tub, and a smoke alarm, which they did not remove but left hanging.

The tenants acknowledged that they put a stop payment on their rent for October 2010, but the stop payments in November and December 2010 were due to clerical errors of their bank.

### Analysis

In considering all of the evidence, I find as follows.

- 1) \$90 in outstanding rent for December 2010 – the landlord is entitled to this amount. The tenants were responsible for December 2010 rent, whether they occupied the rental unit or not. As indicated in the January 11, 2011 decision, the tenancy ended on December 31, 2010.
- 2) January 2011 rent – the landlord was not aware that the tenants had in fact vacated, because the tenants gave late notice, and then failed to adequately communicate their intentions to the landlord. The landlord was not certain until January 11, 2011 that the tenants had vacated. I find that the landlord is entitled to lost revenue for January 2011 in the amount of \$740, after the \$150 deduction is applied. The landlord did not establish that the renovations had been completed, and therefore the tenants still would have been entitled to the deduction.
- 3) \$345 for cleaning – I accept the landlord's evidence regarding the condition of the rental unit after the tenancy ended and the need for the amount of cleaning done, and I grant the landlord this amount.
- 4) \$150.24 for carpet cleaning – the landlord is entitled to this amount. Tenants are generally responsible for having carpets professionally cleaned at the end of the tenancy.

- 5) \$20.78 for rekeying the locks – the landlord is entitled to this amount. I accept the landlord's testimony that they did not receive the keys, and the tenants did not effectively communicate to the landlord that they had returned the keys.
- 6) \$80 for four late payment fees of \$20 each for late payment of rent in October, November and December 2010 and January 2011 – the landlord is entitled to the late payment fees for October, November and December 2010. The tenants did not provide sufficient evidence to establish that the late payments in November and December were due to bank errors, and the tenants did not take steps to immediately rectify the situation when they became aware of the errors. The landlord is not entitled to claim a late payment fee for January 2011, as this amount was not rent but rather lost revenue.
- 7) \$75 for three NSF cheques – the landlord is not entitled to this amount, as the clause in the tenancy agreement which indicates a rate of \$35 for each NSF cheque is contrary to the Act and therefore void. The landlord may not merely reduce the amount to comply with the Act.
- 8) \$16.79 for a dimmer switch – I accept the landlord's evidence on this point and grant this amount.
- 9) \$5.03 for tub paint – the move-in inspection report does not note this damage. I grant the landlord this amount.
- 10) \$34.99 for a smoke alarm – the landlord's photo shows the smoke alarm is missing, not left hanging. I accept the landlord's evidence on this point and grant this amount.
- 11) \$52.64 for recycling – the landlord's photos show several items in the yard, such as broken flower pots and firewood, which do not appear to be due to the landlord's renovations. I therefore accept the landlord's evidence on this point and grant this amount.

The landlord is not entitled to \$31 for the cost of an affidavit, \$50 for recovery of the filing fee on a previous application and \$13.01 for the costs of registered mail, as the only cost associated with the dispute resolution process which is recoverable is the filing fee for the current application.

As the landlord's claim was substantially successful, I find that they are entitled to recovery of the \$50 filing fee for this application.

Conclusion

The landlord is entitled to a total of \$1565.47. I dismiss the remainder of the landlord's application. I order that the landlord retain the security deposit of \$445 in partial compensation of their award, and I grant the landlord a monetary order under section 67 for the balance of \$1120.47. This order may be filed in the Small Claims Court 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: April 18, 2011.

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Residential Tenancy Branch