



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, damage to the rental unit site or property, compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulation or tenancy agreement, recovery of the filing fee, and an order to retain the security deposit in partial satisfaction of the claim.

Both parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

### **Issue(s) to be Decided**

Is the Landlord entitled to a monetary order for unpaid rent, damage to the rental unit site or property, compensation for damage and loss under the Act, regulation or tenancy agreement, recovery of the filing fee, and an order to retain the security deposit in partial satisfaction of the claim?

### **Background and Evidence**

The Landlord and Tenant agree that they had a written tenancy agreement which started April 15, 2011 and was to continue for a fixed term until April 30, 2012. The parties agree that the Landlord allowed the Tenant to move into the property a week early in exchange for arranging carpet cleaning, wall repair and touch up of walls, as stated on the move-in condition inspection report signed on April 08, 2011 by the parties. The tenancy agreement states that the rent is \$1,300.00 per month, due on the first of the month. The tenancy agreement addendum signed by the parties states that late fees of \$25.00 are due if a cheque is NSF. The parties agree that the Landlord holds a security deposit from the Tenant in the amount of \$650.00 paid at the beginning of the tenancy. The Tenant moved out and the tenancy ended in August 2011.

### **NSF fees, unpaid rent, and rental income loss claim**

The Tenant stated that when the Landlord advised him that he had issued NSF cheques for May 2011 and July 2011, he replaced the cheques with bank drafts.

The Landlord's agent stated that they incurred NSF fees for the two NSF cheques May and July 2011 and they are seeking \$25.00 for each occurrence, for a total of \$50.00 for the NSF fees, as allowed by the tenancy agreement addendum signed by the Tenant.

The Tenant stated that the Landlord's agent gave him notice on August 03, 2011 as the owners were moving into the rental unit. The Tenant did not provide a copy of any notice into evidence. The Tenant stated that he bought a house in the first week of August but could not take possession until August 20, 2011, and that he moved out as quick as he could. The Tenant stated that he did not pay the rent for August 2011 in the amount of \$1,300.00, but advised the Landlord that they can keep his security deposit to offset the rent owed.

The Landlord's agent stated that the Tenant was never given notice to move out for Landlord use. The Landlord's agent stated that there was a verbal conversation with the Tenant in August where he was advised that the owners will want to move into the rental unit in the future, but that they were willing to wait until the end of the fixed term, April 30, 2012, or alternately have their agent find the Tenant another rental property if that was his preference. The Landlord's agent stated that the Tenant failed to pay his rent and a Ten Day Notice to End Tenancy was issued to him on August 03, 2011. The Landlord provided a copy of the Ten Day Notice into evidence. The Landlord's agent stated that the Tenant promised to pay the rent for August 2011, but never did.

The Tenant stated that he should not be responsible for rental income loss as the rental unit was the worst place he ever lived and the thought the owners were planning to move in.

The Landlord's agent stated that they did not agree to allow the Tenant to end the fixed term tenancy early and the Tenant breached the tenancy agreement when he failed to pay the rent. The Landlord's agent stated that they were not certain what date the Tenant was moving out and they did not have a move out inspection as he abandoned the rental unit without providing a forwarding address and he did not return the keys. The Landlord's agent stated that on August 26, 2011 they found the rental unit vacant and that the Tenant had moved out. The Landlord's agent stated that they were able to get new tenants for the rental unit who moved in on September 10, 2011 and paid rent from that date onwards. The Landlord is claiming rent for nine days where they had rental income loss in September which they have calculated as \$433.30.

#### Carpet Cleaning costs

The Tenant stated that at the beginning of the tenancy he reached an agreement with the Landlord to have the carpets cleaned, as he was allowed to move in early. The Tenant stated he provided a receipt for this in the amount of \$180.00 and the Landlord's agent reimbursed him. The Tenant stated that the carpets had permanent stains including what appeared to be red lipstick stains that could not come out when the carpets were cleaned. The Tenant stated that the move in condition inspection report notes that there are marks on the carpet. The Tenant stated that he did not have time

to clean the rental unit or the carpets when he moved out. The Tenant stated that he owns 50 rental properties himself, and he travels a lot out of Province and out of the country and is very busy. The Tenant disagrees with the Landlord's carpet cleaning cost and states that it is excessive.

The Landlord's agent confirmed that the carpets are beige and are the original carpets that came with the house in the 1990's. The Landlord's agent stated that they reimbursed the Tenant when the carpet cleaning was done at move in based on the receipt he provided to them. The Landlord's agent provided photographic evidence regarding the condition of the rental unit at the end of the tenancy and a detailed invoice from the carpet cleaning company who undertook the cleaning. The carpet had some marks at the start of the tenancy which are documented on the move-in condition inspection report. The Landlord's agent stated that the carpets were extremely dirty and unsanitary at move out as documented by the carpet cleaning professionals on their carpet cleaning invoice. The Landlord is requesting carpet cleaning costs of \$450.00.

#### Carpet Replacement and Carpet Installation claimed

The Tenant stated that the carpets had pre-existing stains including what appeared to be red lipstick stains that did not come out when the carpets were cleaned at move in. The Tenant stated that the move in condition inspection report notes the marks in the carpet, and that the carpets were old and in poor condition when he moved in.

The Landlord's agent testified that the Tenant ruined the carpet. The Landlord stated that the carpet was approximately 11-15 years old and came with the house when it was constructed in the 1990's. The Landlord's agent provided written estimates for carpet replacement and carpet install, however, she stated that the Landlord did not have this work done and that the new tenants who moved in September 10, 2011 rented the rental unit as is. The Landlord is requesting \$2,520.00 and \$1,251.04 for these potential costs based on the estimates.

#### Utilities claimed

The Tenant stated that there was no agreement of any amount he was to pay for utilities.

The Landlord's agent stated that the division of utilities is 60% for the upstairs Tenant and 40% for the downstairs, however, the tenancy agreement and addendum provided into evidence do not state any amount or percentage of utilities which the Tenant has agreed to pay. The Landlord's agent provided copies of the utilities bills but no evidence was provided of any agreement reached with the Tenant for how much if any of the utilities were to be paid by the Tenant. The Landlord is requesting 60% of the utilities in the amounts of \$108.76 for April to June 2011 and \$72.91 for July to August 2011.

Cleaning (plus HST) of rental unit claimed

The Tenant stated that he did not have time to clean the rental unit when he moved out as he was too busy with travel and moving house. The Tenant stated that the rental unit was not in good condition when he moved in and that there were too many things wrong to note on the move in condition inspection report. The Tenant stated that the Landlord had not removed garbage left by the previous tenants before he moved in.

The Landlord's agent stated that they removed the garbage left by previous tenants after the Tenant moved in and notified them of this. The Landlord stated that the Tenant moved approximately a week early on, April 08, 2011, for which he was not charged rent and that he had agreed to do minor work on the rental unit in exchange for this. The Landlord's agent provided a copy of an email of an estimation of potential cleaning costs if the Landlord chose to hire a particular cleaning company to do the job. The Landlord provided some photographic evidence of condition of the rental unit at the time the tenancy ended. The Landlord's agent stated that the property owners advised her that they did most of the work in the rental unit themselves and that owner did not provide any documented evidence or receipts to her prior to the hearing. The Landlord is requesting \$899.00 plus \$107.88 HST for based on the quote of an estimate they received by email.

Placement fee (plus HST) for finding new tenant

The Tenant stated that he does not feel he should have to pay for this and that he has not signed any agreement for a placement fee.

The Landlord's agent stated that the placement fee is their standard automatic charge to a property owner whenever a rental unit has to be re-rented. The Landlord's agent stated that the placement fee is to cover administrative costs related to the rental unit, advertising, and time spent showing rental unit. The Landlord is requesting that the Tenant pay \$650.00 plus HST \$78.00 for the placement fee.

Other items claimed by the Landlord

The Landlord has also claimed:

- Fixing den door \$25.80
- Garbage haul away \$139.81
- Curtain rod \$33.57
- Screen door repairs \$86.18
- Closet door replace and paint \$82.58
- Bathroom paint \$37.89
- Paint supplies \$40.32
- Miscellaneous supplies (gloves) \$8.40
- Garage door opener \$33.59
- Repair garage door \$201.60
- Labour (time) for repairs, yard cleanup, and painting \$700.00

- Replace missing shelves in garage \$163.65
- Missing cabinet in bath \$166.88
- Missing light fixtures \$392.00
- Broken outdoor bench \$125.00
- Replace missing hose holder \$54.99
- Replace missing hose \$49.00
- Replace missing lamp shade in den \$10.00
- Replace broken blind off dining room \$300.00

The Tenant stated that the rental unit was not in good condition when he moved in and that there were too many things wrong to note on the move in condition inspection report. The Tenant stated that when he moved in he discovered the garage door was broken, lights were broken and missing in the rental unit, glass was broken, the screen door was ripped, the garbage had not been removed, and the carpets were old and stained. The Tenant stated this was the worst place he had ever lived.

The Landlord's agent stated that the Tenant moved approximately a week early in exchange for doing minor work on the rental unit. The Landlord's agent stated that after the Tenant moved out they noticed that he had not done the work agreed to, neglected the property and rental unit, and did not do the watering required to maintain the yard. The Landlord's agent provided some photographic evidence of condition of the rental unit at the time the tenancy ended. The Landlord's agent stated that the Landlord's did the work for the listed items themselves and that owner did not provide any documented evidence or receipts to her prior to the hearing.

### **Analysis**

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

#### **NSF fees, unpaid rent, and rental income loss claim**

I find that the Landlord is entitled to the \$25.00 late fees, as allowed by the tenancy agreement and the Act, because the Tenant failed to pay rent to the Landlord on May 01, 2011 and July 01, 2011 when it was due. The Tenant's testimony confirms that he had written two NSF cheques and had to replace these with bank drafts. I find that the Landlord is entitled to \$50.00 for the NSF fees incurred.

Section 26 of the Act requires a tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between these parties is that rent is due on the first of the month. The Tenant was still residing in the rental unit as of August 01, 2011 when the rent was due and had not moved out until August 20, 2011 according to his testimony. The Tenant's testimony confirms that he failed to pay

August 2011 rent in the amount of \$1,300.00. I find that the Landlord is entitled to unpaid rent in the amount of \$1,300.00.

The Tenant signed a fixed term tenancy agreement with the Landlord and the tenancy was not due to end until April 30, 2012. The Tenant moved out on or around August 20, 2011, but did not have a mutual agreement to end their tenancy with the Landlord. I find that the Landlord had not given the Tenant Notice to end the tenancy for Landlord use. The Tenant breached the tenancy agreement. I am satisfied with the evidence that the Landlord was not able to find a new tenant for the rental unit until September 10, 2011. The Landlord has claimed \$433.30 for rental income loss for the nine days prior to a new tenant renting the rental unit for September 10, 2011. I find that the Landlord's calculation is incorrect and that the correct amount owed to the Landlord is \$385.71 calculated as follows:  $\$1,300.00 \text{ per month} \times 12 \text{ months} \div 52 \text{ weeks} \div 7 \text{ days a week} = \$42.857 \text{ day} \times 9 \text{ days}$ . I find that the Landlord is entitled to loss of rental income for nine days in the amount of \$385.71.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Regulation the Applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities. To prove a loss and have the Respondent pay for the loss the Applicant must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

#### Carpet Cleaning costs

I find that the Landlord's evidence supports their claim for carpet cleaning costs. The parties agreed that the Landlord paid for the cost of the carpet cleaning which was done at the start of the tenancy. The Tenant did not have the carpet cleaned at the end of the tenancy, and the Landlord incurred costs in having this done. The Landlord provided photographic evidence and a detailed invoice from the carpet cleaning company who

undertook the cleaning. The carpet had some stains at the start of the tenancy which are documented on the move-in condition inspection report, however, I find that carpet cleaning was necessary as the carpet was dirty and unsanitary, which is supported by the evidence in the pictures and professional carpet cleaning company documented invoice provided by the Landlord. The Landlord incurred carpet cleaning costs of \$450.00. I find that the Landlord is entitled to the carpet cleaning costs in the amount of \$450.00, and I find that these costs are reasonable due to the condition of the rental unit at move out.

#### Carpet Replacement and Carpet Installation claimed

I find that the Landlord failed to provide sufficient evidence to support the carpet replacement and carpet installation claimed. The Landlord's agent provided written estimates for carpet replacement and carpet install, however, she stated that the Landlord did not have this work done and that the new tenants who moved in September 10, 2011 rented the rental unit as is. The Landlord's claim for carpet replacement and carpet installation is dismissed.

#### Utilities claimed

I find that the Landlord failed to provide sufficient evidence to support the utilities claimed. The Landlord's agent stated that the division of utilities is 60% for the upstairs Tenant and 40% for the downstairs, however, the tenancy agreement and addendum provided into evidence do not state any amount or percentage of utilities which the Tenant has agreed to pay. The Tenant stated that there was no agreement of any amount he was to pay for utilities. The Landlord's claim for utilities April to August 2011 is dismissed.

#### Cleaning (plus HST) of rental unit claimed

I find that the Landlord failed to provide sufficient evidence to support the cleaning costs claimed. The Landlord provided a copy of an email of an estimation of potential cleaning costs if the Landlord chose to hire a particular cleaning company to do the job. The Landlord provided some photographic evidence of condition of the rental unit at the time the tenancy ended, however, the Landlord provided no evidence of actual costs paid for cleaning, if any. The Landlord's agent stated that the Landlord did the work in the rental unit themselves and that owner did not provide any documented evidence or receipts to her prior to the hearing. The Landlord's claim for cleaning of the rental unit plus HST is dismissed.

#### Placement fee (plus HST) for finding new tenant

I find that the Landlord failed to provide sufficient evidence to support the placement fee claimed. The Landlord's agent stated that it is their standard automatic charge to a property owner that the Landlord is requesting that the Tenant pay. The Landlord's agent did not provide any documented evidence or receipt relating to this amount. The

Landlord's agent stated that the cost is to cover administrative costs related to the rental unit, advertising, and time spent showing rental unit. The Landlord provided no evidence of any advertising costs incurred or costs incurred relating to any showings of the rental unit or other evidence to quantify this administrative cost, and there is nothing in the tenancy agreement or addendum signed by the Tenant to indicate that the Tenant had agreed to be responsible for this fee. The Landlord's claim for a placement fee plus HST is dismissed.

Other items claimed by the Landlord

The Landlord has also claimed:

- Fixing den door
- Garbage haul away
- Curtain rod
- Screen door repairs
- Closet door replace and paint
- Bathroom paint
- Paint supplies
- Miscellaneous supplies (gloves)
- Garage door opener
- Repair garage door
- Labour (time) for repairs, yard cleanup, and painting
- Replace missing shelves in garage
- Missing cabinet in bath
- Missing light fixtures
- Broken outdoor bench
- Replace missing hose holder
- Replace missing hose
- Replace missing lamp shade in den
- Replace broken blind off dining room

I find that the Landlord failed to provide sufficient evidence to support these other items claimed as listed above. The Landlord provided some photographic evidence of condition of the rental unit at the time the tenancy ended, but no evidence was provided or labour, receipts, or calculations to support the listed amounts claimed. The Landlord's agent stated that the Landlord's did the work for these items themselves and that owner did not provide any documented evidence or receipts to her prior to the hearing. I dismiss the Landlord's claim for the above-listed other items claimed.

I find that the Landlord is entitled to a monetary order for the following:

- NSF fee for May 2011 rent in the amount of \$25.00
  - NSF fee for July 2011 rent in the amount of \$25.00
  - August 2011 rent in the amount of \$1,300.00;
  - nine days rental income loss for September 2011 in the amount of \$385.71;
  - Carpet cleaning costs incurred (receipt provided by Landlord) \$450.00;
- Subtotal owing: \$2,185.71.



As the Landlord has in part succeeded in their Application, I find that the Landlord is entitled to recover the \$100.00 fee for this proceeding. This brings the balance of the amount owing to the Landlord to \$2,285.71.

The Landlord holds the Tenant's security deposit of \$650.00. I order that the Landlord retain the security deposit, in partial satisfaction of the claim. I grant the Landlord an order under section 67 for the balance due of **\$1,635.71**.

### **Conclusion**

- I dismiss the Landlord's claim for:
- Carpet Replacement and Carpet Installation
- Utilities
- Cleaning (plus HST) of rental unit
- Placement fee (plus HST) for finding new tenant
- Fixing den door
- Garbage haul away
- Curtain rod
- Screen door repairs
- Closet door replace and paint
- Bathroom paint
- Paint supplies
- Miscellaneous supplies (gloves)
- Garage door opener
- Repair garage door
- Labour (time) for repairs, yard cleanup, and painting
- Replace missing shelves in garage
- Missing cabinet in bath
- Missing light fixtures
- Broken outdoor bench
- Replace missing hose holder
- Replace missing hose
- Replace missing lamp shade in den
- Replace broken blind off dining room

I grant the Landlord's claim for NSF fees for May and July 2011, unpaid rent for August 2011, nine days rental income loss for September, carpet cleaning costs incurred, and the filing fee.

I find that the Landlord is entitled to \$2,285.71. As I have ordered that the Landlord retain the security deposit of \$650.00, I find that the Landlord is entitled to monetary order for the balance owing pursuant to section 67 against the Tenant in the amount of **\$1,635.71**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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 02, 2012.

---

Residential Tenancy Branch