



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, MND, FF

### Introduction

This hearing dealt with the landlord's request for a Monetary Order for unpaid rent, damage to the rental unit and recovery of the filing fee. The landlord originally named two co-tenants in making this application; however, the landlord was unable to locate the second co-tenant and requested the application be amended to name only the tenant served with notice of this hearing. I granted the request for amendment and this decision and accompanying Monetary Order only identify one tenant.

The tenant did not appear at the hearing. The landlord provided evidence that the landlord served the tenant with notification of today's hearing by registered mail addressed to the tenant at the forwarding address provided by the tenant. Having been satisfied that the landlord adequately served the tenant in accordance with the requirements of the Act, the hearing proceeded without the tenant present.

### Issues(s) to be Decided

1. Whether the landlord has established an entitlement to compensation for damage to the rental unit.
2. Whether the landlord has established an entitlement to unpaid rent.
3. Award of the filing fee.

### Background and Evidence

Upon hearing undisputed testimony of the landlord, I make the following findings concerning the tenancy. The tenancy commenced November 1, 2006 and ended December 29, 2008. The tenant was required to pay rent of \$1,135.00 per month and

Residential Tenancy Branch  
Ministry of Housing and Social Development

had a parking agreement requiring payment of \$40.00 per month. The landlord had collected a \$542.50 security deposit at the commencement of the tenancy.

The landlord testified that on December 28, 2008 a complaint of water leaking in to the unit below the rental unit was received. Upon responding to the complaint, a marijuana grow operation was discovered in the rental unit. The watering system appears to have malfunctioned and water leaked out and damaged the rental unit. The landlord and tenant signed a Mutual Agreement to End a Tenancy on December 29, 2008 with an effective date of December 29, 2008. The landlord and tenant participated in a move-out inspection on December 29, 2008 and the tenant consented in writing that deductions of \$3,231.85 from the security deposit. The amount of \$3,231.85 includes rent for January 2009, plus, cleaning, emergency call out charges, and estimates for repair of damages.

The landlord provided some invoices to substantiate the charges agreed to by the tenant. The landlord testified that the actual costs were greater than the estimates; however, in making this application the landlord was only seeking to recover the amount agreed to by the tenant at the time of the move-out inspection, plus \$40.00 for lost parking revenue and a \$25.00 late fee for January 2009, less a credit for the security deposit and accrued interest amounting to \$561.64.

## Analysis

Upon review of the move-out inspection report and all the evidence presented to me, I am satisfied that the landlord incurred costs to repair and clean the rental unit and incurred a loss of rent for January 2009 as a result of the tenant's actions. Therefore, I find the landlord is entitled to recover the charges agreed to by the tenant in the amount of \$3,231.85. I also find that the tenant duly authorized the landlord to retain the



# Dispute Resolution Services

Page: 3

Residential Tenancy Branch  
Ministry of Housing and Social Development

tenant's security deposit and accrued interest in partial satisfaction of the amounts owed to the landlord.

I deny the landlord's request to recover a late payment fee of \$25.00 for January 2009 as the tenancy ended December 29, 2009 and the entitlement to charge late payment fees was a term of the tenancy agreement. In other words, I find the landlord lost the entitlement to claim late payment fees when the tenancy ended.

Upon review of the tenancy agreement and parking agreement, I did not conclude that the parking space is for exclusive use of a tenant that occupies the rental unit. Therefore, it is uncertain why the landlord could not have re-rented the parking space to somebody else and I was not provided with any evidence that the landlord did try to re-rent the parking space. Therefore, I was not satisfied the landlord made every reasonable attempt to minimize this loss and I deny the landlord's request to recover lost parking revenue from the tenant for the month of January 2009.

Since the landlord was largely successful in this application, I grant the landlord's request to recover the filing fee from the tenant.

In light of the above findings, I provide the landlord with a Monetary Order calculated as follows:

Damages and cleaning as agreed by tenant	\$ 3,231.85
Less: security deposit and accrued interest	( 561.64)
Plus: filing fee	<u>50.00</u>
Monetary Order for landlord	<u><u>\$ 2,720.21</u></u>



# Dispute Resolution Services

Page: 4

Residential Tenancy Branch  
Ministry of Housing and Social Development

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims).

## Conclusion

The landlord is provided with a Monetary Order in the amount of \$2,720.21 to serve upon the tenant and enforce in Provincial Court (Small Claims).

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 28, 2009.

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Dispute Resolution Officer