



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's request for a Monetary Order for unpaid rent, damage to the rental unit, damage or loss under the Act, regulations or tenancy agreement, retention of the security deposit and recovery of the filing fee. The tenant named as a respondent did not appear at the hearing but was represented by an individual appearing on her behalf (herein referred to as RG). Both parties were provided an opportunity to be heard and to respond to the other party's submissions.

### Issues(s) to be Decided

1. Has the landlord established an entitlement to unpaid rent?
2. Has the landlord established an entitlement to compensation for damages to the rental unit, and if so, the amount?
3. Has the landlord established an entitlement to damages or loss under the Act, regulations or tenancy agreement, and if so, the amount?
4. Retention of the security deposit.
5. Award of the filing fee.

### Background and Evidence

Upon hearing testimony of both parties and upon review of the documentation before me, I make the following findings. On November 27, 2008 the landlord and tenant signed a tenancy agreement requiring the tenant to pay rent of \$900.00 and parking of \$30.00 on the 1<sup>st</sup> day of every month for a fixed term of one year set to commence December 1, 2008. The tenant and RG are identified on the tenancy agreement; however, only the tenant signed the agreement. The landlord and tenant conducted and signed a move-in inspection report on December 1, 2008. The tenant gave the landlord written notice to end the tenancy May 27, 2009 effective May 31, 2009. The tenant vacated the rental unit May 30, 2009 and a move-out inspection was conducted by both parties. The tenant did not sign the move-out inspection report.

The landlord testified the tenant did not satisfactorily clean the unit, including the carpets or drapes, upon vacating the rental unit, and damaged the walls by installing shelves in the kitchen and bathroom, and did not return the tenant manual or the bike

key. The landlord claimed that despite their efforts to re-rent the unit, the landlord was unable to re-rent the unit until July 1, 2009. The landlord testified the tenant paid a \$450.00 security deposit on November 27, 2008 and a \$25.00 key deposit for the front door on that same day. As evidence for the hearing, the landlord provided a copy of the tenancy agreement, inspection reports, and invoice from the maintenance division of the landlord.

The tenancy agreement was submitted as evidence. The identification area shows the names of the tenant and RG; however, RG did not sign the tenancy agreement. RG maintained that he was precluded from signing the tenancy agreement since he did not agree to pay an extra \$50.00 the landlord wanted for additional occupants. The landlord claims that the tenant had notified the landlord that RG would not be moving in but the tenant's children moved in and at some point RG approached the landlord about signing the tenancy agreement. The landlord requested RG agree to pay an extra \$50.00 in rent per month for having additional occupants in the rental unit. RG refused to agree to the extra occupant charge.

RG submitted copies of receipts issued by the landlord as evidence. Computerized receipts dated December 1, 2009 indicates \$450.00 and \$730.00 was paid to the landlord and that funds were received from RG. In the "notes" area of the computerized receipts, it states the tenant paid the \$730.00 and the \$450.00 was for the security deposit. Handwritten receipts show receipt of \$1,180.00 from the tenant on November 27, 2008. The tenancy agreement required that a \$450.00 security deposit be paid no later than November 27, 2009. The landlord testified that the landlord's system shows RG's name on the security deposit receipt because his name was entered into their system first but that it does not mean RG actually paid the security deposit.

RG contended that the tenancy agreement relied upon by the landlord is unenforceable since the landlord did not permit him to sign the agreement. RG submitted that it was he that paid the security deposit, not the tenant, and that the landlord's agents were accepting rent payment from both the tenant and RG for the same months. RG testified that he slept at the rental unit many nights and was present at the time of move-out.

With respect to the landlord's claims for damages and cleaning, RG stated that the rental unit was clean and that he had filled the shelving holes to the best of his ability. RG agreed that the carpet required cleaning but disputed the drapes required cleaning as they were stored in plastic bags. RG acknowledged that the tenant's manual and bike key were likely not returned. RG disputed having to pay rent for June 2009 as he claimed the landlord assured the tenant the tenant would not have to pay rent for June 2009 as the lease breaking fee would compensate the landlord; however,

RG also took the position that the lease breaking fee was not enforceable as the entire tenancy agreement was not enforceable.

RG provided handwritten receipts showing that a \$25.00 key deposit and a \$25.00 bike key deposit were paid to the landlord.

## Analysis

The landlord is seeking compensation from the tenant, not RG. The landlord and the tenant entered into a tenancy agreement signed by both the landlord and the tenant. The landlord provided a reasonable explanation that the tenant had advised the landlord that RG would not be moving in. The tenant has had the opportunity to participate in this hearing and was not present. Therefore, I accept the landlord's submission that the tenant advised the landlord that RG would not be moving in at the time the tenant signed the tenancy agreement.

Upon hearing the testimony of both parties, I find that RG approached the landlord after the tenant and her children moved in to the rental unit and that it is likely that RG was precluded from signing the tenancy agreement without an agreement for additional rent due to the additional occupants in the rental unit. However, I do not find these actions on part of the landlord invalidated the tenancy agreement signed by the tenant. The fact remains that the tenant occupied the rental unit and agreed upon certain terms and conditions in entering into the tenancy agreement. Therefore, I uphold the written tenancy agreement in determining the landlord's entitlement to monetary compensation against the tenant.

The tenancy was for a fixed term; however, the tenant ended the tenancy early. The tenant gave very little notice before vacating the rental unit and I find the landlord entitled to recover the loss of rent it suffered for the month of June 2009. I do not find sufficient evidence the landlord agreed to waive its right to claim loss of rent. Liquidated damages are intended to offset the costs of re-renting a rental unit before the expiry of a fixed term and may be charged in addition to loss of rent. I find the liquated damages amount to be a reasonable pre-estimate of costs to re-rent the unit and is not a penalty, meaning the clause is enforceable. Therefore, I grant the landlord's request to recover loss of rent, parking and liquated damages of \$900.00, \$30.00 and \$300.00 respectively.

As RG acknowledged the carpets were in need of cleaning at the end of the tenancy I award carpet cleaning of \$100.00 to the landlord. RG acknowledged there were shelves installed in the rental unit and an attempt was made to patch the holes. The agent conducting the move-out inspection noted the patches and indicated the patches

needed further work on the inspection report. Therefore, I find the patches done by the tenant or RG not sufficient since it was noticed by the landlord's agent conducting the move-out inspection and I award the landlord \$100.00 to repair the walls.

The tenancy agreement and outgoing tenant information provided by the landlord requires the tenant to professionally clean the drapes and provide a receipt of such cleaning to the landlord. RG acknowledged the drapes were not professionally cleaned upon vacating the unit but claimed this was not required since the drapes were stored in plastic bags. Even if I accepted that the drapes were stored in plastic bags, I do find the tenant was relieved of her obligations to professionally clean the drapes upon ending the tenancy. Therefore, I award drape cleaning in the amount of \$83.90 to the landlord.

RG agreed to have the tenant return the landlord's manual and I ORDER the tenant to do so forthwith. I do not award the landlord \$10.00 for replacement of the manual. As there was no dispute that the bike key was not returned I award the landlord \$25.00 for the unreturned bike key.

As evidence that cleaning was required, the landlord provided the move-out inspection report and an invoice provided by the landlord's maintenance division. Since the tenant did not sign the move-out inspection report and RG maintained the unit was clean I have considered whether the landlord's evidence was sufficient to show the rental unit required additional cleaning. The move-out inspection report has a list of items in each room and next to several items is "2", denoting "requires cleaning". The comments section of the report does not make specific reference to the cleanliness of the unit but there are comments about other deficiencies. Therefore, I find the disputed move-out inspection report does not provide much insight into the amount of cleaning required. The invoice does not in itself satisfy me of the cleaning required since the landlord's own maintenance division performs any cleaning tasks; therefore, I find the invoice holds less weight as would an invoice from a cleaner that is not the landlord. In the absence of other evidence, such as photographs or statements from a witness, I find the landlord has not satisfied me that the tenant left the rental unit in a condition that was not reasonably clean, as is required by the Act. Therefore, I deny the landlord's claims for cleaning as not being sufficiently substantiated by evidence.

With respect to the security deposit, RG claims he paid the security deposit and the landlord claims the tenant paid the security deposit. Upon consideration of all the evidence before me, I find it more likely than not that the tenant paid the first month's rent, less application fee, plus the security deposit on November 27, 2008 as indicated by the November 27, 2008 handwritten receipt and that the landlord enters such deposits in its computerized system in the days that follow and generates a computerized receipt. I find no reason not to credit the tenant with a security deposit of

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\$450.00. The landlord also issued two handwritten receipts to the tenant for two key deposits of \$25.00 each. Since I have found that the computerized receipts are generated from the handwritten receipts, I find the handwritten receipts indicative of the amounts received from the tenant. Therefore, I find the tenant has a total credit of \$500.00 in deposits.

In light of the above findings, I authorize the landlord to retain the deposits of \$500.00 in partial satisfaction of the amounts owed the landlord and I award the filing fee of \$50.00 to the landlord. The landlord is provided a Monetary Order for the balance owing, calculated as follows:

Unpaid rent and parking – June 2009	\$ 900.00
Liquidated damages	300.00
Carpet cleaning	100.00
Wall repair	100.00
Drape cleaning	83.90
Bike key	25.00
Filing fee	50.00
Subtotal	\$ 1,558.90
Less: deposits	(500.00)
Monetary Order	<u>\$ 1,058.90</u>

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

## Conclusion

The landlord is authorized to retain the tenant's security deposit and other deposits in partial satisfaction of the amounts owed the landlord and the landlord is provided a Monetary Order for the balance owing of \$1,058.90.

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: September 18, 2009.

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Dispute Resolution Officer