



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MND, MNR, MNDC, MNSD, FF, SS

### Introduction

This hearing dealt with the landlord's request for a Monetary Order for damage to the rental unit, unpaid rent, damage or loss under the Act, regulations or tenancy agreement, retention of the security deposit, recovery of the filing fee and a request for substituted service. The tenants did not appear at the hearing. The landlord testified that she had spoken to both tenants after they vacated the rental unit who advised the landlord they had moved back to their respective parents' homes. The landlord testified that the tenants' parents' home addresses were provided on the application for tenancy and the landlord sent the hearing packages to those addresses via registered mail. The landlord provided the registered mail receipts as evidence.

Section 89(1) of the Act provides for ways a party must serve the other party with hearing documents. Section 89(1) requires service by one of the following methods:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Based on the evidence before me, I am satisfied that the landlord served each of the tenants at an address at which they resided at the time the registered mail was sent to the tenants. Therefore, I proceed to consider the merits of the landlord's application and I did not find it necessary to consider a request for substituted service.

#### Issues(s) to be Decided

1. Has the landlord established an entitlement to monetary compensation from the tenants and if so, the amount?
2. Retention of the security deposit.
3. Award of the filing fee.

#### Background and Evidence

Based on the documentary evidence provided to me and the undisputed verbal testimony of the landlord, I make the following findings. The owner of the rental unit and the tenants entered into a tenancy agreement to commence on November 1, 2008 for a fixed term to end August 31, 2009. The tenants were required to pay rent of \$1,380.00 on the 1<sup>st</sup> day of each month and had paid a \$690.00 security deposit. The tenants participated and signed a move-in inspection report. The tenants did not participate in a move-out inspection report and one was completed by the landlord alone.

The landlord testified that in April or May 2009 the female tenant advised him that she had to vacate the rental unit due to a job transfer. The rent for June 2009 was paid by the male tenant. Shortly thereafter the landlord received a phone call from the strata council who advised that different occupants had moved into the rental unit and that there had been a police raid at the rental unit. The landlord testified that talked to the male tenant who advised that he and the female tenant had ended their relationship and they the rental unit had been sublet to other persons. The landlord confirmed that the landlord had not entered into a tenancy agreement, collected rent or a security deposit

from the occupants living in the rental unit. The landlord obtained an Order of Possession on June 17, 2009 upon making an application to end the tenancy early. The landlord was able to have the occupants vacate the rental unit upon obtaining a Writ of Possession.

In making this application, the landlord is seeking to recover the following amounts from the tenants:

<u>Item(s)</u>	<u>Amount Claimed</u>
Loss of July rent	1,380.00
Floor replacement in living room and painting	2,026.50
Door repair	1,033.20
Cleaning	350.00
2 Fobs not returned	100.00
Key replacement	20.00
Advertising	12.98
Filing fees x 2	100.00
Supreme Court filing fee for Writ of Possession	111.00
Postage for dispute resolution	17.35
Subtotal	\$ 5,151.03
Less: retention of security deposit	690.00
Total	\$ 4,461.03

As evidence to support the landlord's claims, the landlord provided the copies of the tenancy agreement, condition inspection reports, receipts, invoices and photographs of the damaged property. Upon enquiry, the landlord described how the carpeting was excessively soiled and stained, the walls dented, the front door kicked in and FOBs and keys not returned. The landlord was able to secure new tenants for August 2009. Upon enquiry, the landlord testified that the rental unit was newly constructed at the beginning of the tenancy.

Analysis

Upon consideration of all of the evidence before me, I am satisfied that the tenant or tenants sublet the rental unit without the landlord's written consent. Where a rental unit is sublet, the tenants who have an agreement with the landlord are responsible for any damage caused by the persons the tenants permitted to have occupation of the rental unit. The evidence sufficiently satisfies me that the rental unit was damaged during the tenancy and that the landlord incurred costs to repair the damages and incurred a loss of rent for the month of July 2009. Therefore, I have permitted the landlord's claims except for the following amounts, as explained below.

Awards for damages are intended to be restorative, meaning the award should place the party making the claim in the same position they would have been in had the damage not occurred. Furnishings and fixtures depreciate due to normal wear and tear and aging, thus an allowance for depreciation should be taken into account where used items are replaced with new items. Carpeting has a normal useful life of 10 years. Therefore, I reduced the landlord's claim for replacement flooring to reflect the 8 months of tenancy and award the landlord the balance of remaining life that was lost due to the damage. I reduce the flooring and paint touch award to \$1,905.54.

I do not award the filing fee paid for the previous application for dispute resolution as it was before that Dispute Resolution Officer to make an award for the filing fee at that Officer's discretion.

I do not award postage costs to the landlord as I find mailing documents to tenants to be in the ordinary course of business for a landlord.

In light of the above findings, the landlord is authorized to retain the tenants' security deposit and is provided a Monetary Order calculated as follows:

Item(s)	Amount Claimed	Amount Awarded
Loss of July rent	1,380.00	1,380.00
Floor replacement in living room and painting	2,026.50	1,905.54
Door repair	1,033.20	1,033.20
Cleaning	350.00	350.00
2 Fobs not returned	100.00	100.00
Key replacement	20.00	20.00
Advertising	12.98	12.98
Filing fees x 2	100.00	50.00
Supreme Court filing fee for Writ of Possession	111.00	111.00
Postage for dispute resolution	17.35	0.00
Subtotal	\$ 5,151.03	\$4,962.72
Less: retention of security deposit	690.00	690.00
Total	\$ 4,461.03	<b>\$ 4,272.72</b>

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

### Conclusion

The landlord was largely successful in establishing an entitlement to recover damages or losses from the tenants. The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance owing of \$4,272.72 to serve upon the tenants.

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: November 25, 2009.

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Dispute Resolution Officer