



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

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

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent, for damages to the rental unit, site or property, for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and an Order to keep all of the security deposit and to recover the cost of the filing fee. At the outset of the hearing the landlord states the tenants have abandoned the rental unit and therefore he withdraws his application for an Order of Possession.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on July 01, 2010 and on August 03, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on August 08, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for damages to the unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security deposit?



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## Background and Evidence

The landlords' undisputed testimony is:

This tenancy started on February 01, 2009 and ended around June 30, 2010 when the tenants abandoned the rental unit. Rent for this unit was \$1,395.00 per month and was due on the first of each month. The tenants paid a security deposit of \$700.00 on January 10, 2009.

The landlord states a move in condition inspection was completed with the tenants. The tenants were given three opportunities to attend a move out condition inspection but failed to appear and this inspection was completed in the tenant's absence. (Copies provided)

The landlord states the tenants paid partial rent of \$300.00 for June, 2010 and a 10 Day Notice to End Tenancy was served to the tenants in person on June 02, 2010. This gave an effective date to end the tenancy of June 12, 2010 due to \$1,395.00 in unpaid rent. The tenants did not move out on June 12, 2010 and the landlord went to the unit on June 30, 2010 and found the tenants had removed their personal belongings and abandoned the unit.

The landlord sent the tenants a copy of the hearing documents to the dispute address as he hoped they had organised a mail redirection. This mail was returned to the landlord so he tracked the tenants down to their new address by carrying out a reverse search with their phone number. The landlord sent the tenants the hearing documents again on August 03, 2010 to their new address (documents provided to confirm tenants address).

The landlord states the tenants failed to pay for their garbage collection services and have an outstanding bill from March and April, 2010 of \$22.84 and from May and June, 2010 of \$26.36. The water account is in the tenants name and the tenants 60% share of these bills has not been paid to a total sum of \$127.72. (Copies of bills provided)

The landlord states the tenants caused damage to the rental unit and did not clean or remove their garbage. This damage and cleaning is identified in the move out condition inspection report. The landlord had to re-paint due to damage beyond normal wear and tear; the dining

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room wall and the entry closet were badly scraped. The smoke alarm batteries had to be replaced, a light switch was replaced and the front door lock was replaced as the tenants did not return the keys. The costs for these materials and the paint came to \$121.24. (Receipts and photographs provided)

The landlord states the bathroom door had a 3" to 4" hole in it and was replaced at a cost of \$141.76. A cleaning company came to clean the unit; this took eight hours at \$25.00 per hour to a sum of \$224.00. The yard and house clean up to remove the garbage and the haulage and disposal costs came to \$408.19. The landlord also had to replace the stove and fridge as they had been left in an extremely filthy condition and the interior of the fridge was also damaged. The landlord purchased used items to replace the fridge and stove to mitigate his loss, at a cost of \$300.00. (Photographs and receipts provided)

The landlord also seeks to recover his loss of wages for the hearing; however he withdrew this as he is on holiday today and did not lose any wages. The landlord seeks to recover the costs to print the photos used in evidence at a cost of \$39.87 and recover two lots of registered mail fees at a cost of \$46.46.

The landlord made a mathematical error in the total sum owed. The landlord calculated this to be \$2,377.14 when in fact the total amount owed according to the breakdown of the lands figures and receipts comes to a total amount of \$2,723.60. The landlords claim has been amended accordingly.

## Analysis

The tenants did not appear at the hearing to dispute the landlords' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have considered the landlords evidence. Section 26 of the Act states: a tenant must pay rent on the day it is due under the tenancy agreement, whether or not the landlord complies with the *Act* unless the tenant has a right under the *Act* to deduct all or a portion of rent. I find the tenants failed to pay all the rent owed for June, 2010 and did not have a right under the *Act* to withhold

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any rent; consequently, the landlord is entitled to a monetary award to recover the unpaid rent of **\$1,095.00** pursuant to s.67 of the *Act*. I further find the tenants have not paid their garbage and water bills and as the landlord will be held responsible for these he is entitled to recover the sum of **\$176.92** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for damages, cleaning and garbage removal; I have applied a test used for damage or loss claims to determine if the landlord has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the landlord to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the landlord did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlord has provided sufficient evidence to support his claim and he is able to meet all of the components of the above test. Therefore, I find that the landlords claim for damages is upheld and he is entitled to a monetary award to the amount of **\$1,195.19** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for photograph printing and registered mail costs; I find the landlord is entitled to recover the costs incurred to print his photographs for his evidence package to the sum of **\$39.87**; however, I find it was the landlords choice to send the hearing

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documents by registered mail to the tenants and therefore he must bear this cost of \$46.46 himself.

As the landlord has been largely successful with his claim I find he is entitled to recover his **\$50.00** filing fee from the tenant's pursuant s. 72(1) of the *Act*.

As the landlord has established his claim for damages I find he is entitled to keep the tenants security deposit of \$700.00 to offset against the amount owed to him by the tenants pursuant to s. 38(4)(b) of the *Act*. A Monetary Order has been issued for the following amount:

Unpaid rent for June, 2010	\$1095.00
Damages, cleaning and garbage removal	\$1,195.19
Cost for photographs	\$39.87
Filing fee	\$50.00
<b>Subtotal</b>	<b>\$2,556.98</b>
Less security deposit	(-\$700.00)
<b>Total amount due to the landlord</b>	<b>\$1,856.98</b>

## Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,856.98**. The order must be served on the respondents and is enforceable through the Provincial Court 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: August 20, 2010.

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Dispute Resolution Officer