



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on November 18, 2010, the Tenant did not appear.

The Landlord's Agents appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

### Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order for monetary relief?

### Background and Evidence

This was a six month fixed term tenancy, beginning on April 1, 2010, and continued on a month to month basis thereafter, rent was \$650.00 per month, payable on the 1<sup>st</sup> day of the month and a security deposit of \$325.00 was paid March 4, 2010. The Landlord's Agent, RH, testified that the rental unit was vacated on November 16, 2010, without sufficient notice.

The Landlord's Agent testified and supplied photos of damage to and of the unclean state of the rental unit and invoices and receipts for the repair, clean and removal of the Tenant's possession from the rental unit. The Landlord's Agent also testified that the Tenant vacated owing rent in the amount of \$1,435.00 and that they mitigated their loss by re-renting as soon as possible.

### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, based on a balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord in this case to prove four different elements:

First, proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find the Landlord's Agent provided evidence of the damage and loss to the rental unit and I find that the Landlord mitigated their loss as much as possible.

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.

I accept the evidence and testimony of the Landlord's Agent and find they have established a loss, through testimony, receipts and pictures, the amount of **\$1,740.00** for these claims. I allow the Landlord \$50.00 for the return of the filing fee for the Application, and find the Landlord has established a total monetary claim of **\$1,790.00**, subject to the set off described below.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2) (b) of the Act to be offset against the Tenant's security deposit, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid and loss of rent for June, July, August, September and November, 2010	\$1,435.00
Balcony cleaning	\$30.00
Wall repair	\$30.00
Cleaning	\$90.00
Carpet cleaning	\$60.00
Key replacement	\$50.00
Filing Fee	<u>\$50.00</u>
<b>Subtotal (Monetary Order In Favour Of The Landlord)</b>	\$1,790.00
Less Security Deposit Of \$325.00	-\$325.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$1,465.00</b>

The Landlord is hereby granted a monetary Order in the amount of **\$1,465.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

#### Conclusion

The Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due of **\$1,465.00**.

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: December 06, 2010.

---

Dispute Resolution Officer