



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNR, MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

While there was substantial discussion in this hearing regarding claims made in a previous hearing between these two parties, I find that none of the testimony related to that hearing or the allegations regarding the condition of the residential property as inspected by local authorities is relevant to these proceedings and I have not considered it in this decision.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for money owed or compensation for damage or loss; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 26, 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord provided a copy of a residential tenancy agreement which was signed by the parties on July 15, 2005 for a month to month tenancy beginning on August 1, 2005 for the monthly rent of \$850.00 due on the 1<sup>st</sup> of each month and a security deposit of \$425.00 was paid.

The landlord's agent testified that the tenant failed to pay the full rent owed for the months of July, August, and September 2010 and the landlord issued a 10 Day Notice to End Tenancy on August 4, 2010. The landlord contends the tenant moved out of the unit on September 9, 2010.

The tenant testified that he moved out on August 31, 2010 and that when he called the landlord to return keys on that date he had to leave a message and the landlord did not return his call until September 6, 2010.

The landlord has submitted into evidence a bill from the gas company showing that a bill was outstanding from the period of tenancy. The parties agree that the tenant owes \$112.97 for this gas bill.

The landlord is also seeking compensation for damage to the rental unit in the amount of \$402.04 to change locks; remove the tub surround and drywall in the bathroom and remove drywall in a basement bedroom. The landlord did not submit a Condition Inspection Report recording either the move in or move out conditions.

The landlord's agent provided no testimony as to why the tenant should be held responsible for replacement of drywall or a tub surround. The agent stated she "thought" the locks weren't working and that is why they needed to be replaced but provide no explanation as to why the tenant was responsible.

The landlord seeks compensation also for a number of items including; service of notices to end tenancy; meeting with the tenant to inspect the unit; taking pictures of each room; preparing documentation for the landlord's agent for this hearing and to remove miscellaneous debris from the basement in the amount of \$797.16.

### Analysis

Section 26 requires a tenant to pay rent when it is due under the tenancy agreement whether the landlord has breached the *Act*, regulation or tenancy agreement. Despite the tenant's claim that the home was unsafe, he remained in the home and as such remains responsible for the rent for the time that he resided there.

I accept the tenant's testimony that he had vacated the rental unit prior to the end of August 2010, based on the 10 Day Notice issued by the landlord, and attempted to return the keys to the landlord but that landlord did not respond to the tenant until September 6, 2010. I therefore find the tenant is not responsible for rent for the month of September 2010.

I find the landlord has failed to establish that the tenant is responsible for any requirement to change locks; remove the tub surround or remove any drywall. As such, I dismiss this portion of the landlord's claim.

In relation to landlord's claim for \$797.16 despite the landlord's agent's assertion that the work completed for this invoice was required because the tenant failed to pay rent, I find that all of these costs, except for the removal of debris, is either a cost of doing business or a cost to prepare for this hearing, both of which are not costs that can be recovered from the other party.

As to the landlord's request for compensation for the removal of debris, I find the landlord has failed to establish what the debris was or why it is the tenant's responsibility to remove it. There was no Condition Inspection Report completed and

no indication in the landlord's evidence, other than one photo of a trailer filled with debris, as to what it was, I therefore dismiss this portion of the landlord's application.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,387.97** comprised of \$1,250.00 rent owed; \$112.97 gas owed and \$25.00 of the \$50.00 fee paid by the landlord for this application as the landlord was only partially successful in the application.

I order the landlord may deduct the security deposit and interest held in the amount of \$440.04 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$947.93**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced 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: February 11, 2011.

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Residential Tenancy Branch