



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC

### Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order for damage to the unit, for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the filing fee associated with this application.

The landlord participated in the hearing and provided affirmed testimony. He testified that the tenant emailed him with his forwarding address for the return of his security deposit. The landlord stated that he served the Notice of a Dispute Resolution Hearing to the tenant by way of registered mail at that address, for which Canada Post confirmed that the tenant refused service on December 8<sup>th</sup>, 2010. The tenant did not participate and the hearing proceeded in the tenant's absence.

### Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

The rental unit is a single detached home. Pursuant to a written agreement, the fixed term tenancy was based on a one year lease starting on April 1<sup>st</sup> 2009.

\$2750.00 was payable on the first of each month and the tenant paid a security deposit in the amount of \$1375.00. The tenancy continued month to month after May 31st 2010.

The landlord testified that he had not heard from the tenant or received rent for April and May 2010. On May 24th, 2010 the landlord said that he attended the rental unit; the tenant was not home but the landlord discovered that the tenant had established an extensive grow-op operation. The landlord stated that he took photographs while on site and that he contacted the tenant by phone the same day. He stated that the tenant replied that he would be out by the end of the month. The landlord said that when he returned to the rental unit early June both the tenant and the plants had vanished.

In his documentary evidence, the landlord provided 17 colour photographs showing the extent of the tenant's grow-op. The landlord also provided a June 2010 invoice detailing the initial cost of the tearing down and removal of green house related equipment; initial repairs and painting of the walls and ceilings; dumping fees; and replacement of drapes and locks totalling \$12,071.00.

The landlord claimed unpaid rent for April, May and June, as well as an additional loss of rental income of three months due to the extensive repairs and related home rehabilitation costs associated with grow-ops. The landlord provided a contractor's "home remediation" estimate of \$43,344.00 which involved, but was not limited to; removing moisture and mould content; replacing flooring, insulation, electrical; and painting.

### Analysis

I accept the landlord's undisputed testimony that he served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

I accept the landlord's testimony that the tenant did not pay rent for April and May 2010, and find that he is entitled to recover the loss of rent for these two months.

Section 52 of the *Residential Tenancy Act* provides in part that in order to be effective, a notice to end tenancy must be in writing. The tenant did not provide written notice and therefore I find that the landlord is entitled to a loss of a month's rent for June 2010.

I also accept the landlord's evidence concerning the grow-op and the extent of damages and repairs that are, and by the landlord's testimony continue to be required before the property can be rented again. The landlord claimed a loss of three month's rent related to these repairs and I find this loss reasonable in the circumstances.

The landlord submitted receipts for unpaid utilities for \$2769.36 and for a broken remote garage gate and opener for \$1478.46. I find that the landlord is entitled to recover these claims.

Section 58(2) of the Act states in part that a claim under the Act must not exceed the monetary limit of \$25000.00 set under the *Small Claims Act*; the landlord's claim exceeded that amount.

The landlord established a claim as follows:

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|---|------------|
| - 3 months of unpaid rent at \$2750.00 per month: | \$ 8250.00 |
| - Loss of rental income for 3 months:             | \$ 8250.00 |
| - Unpaid utilities:                               | \$ 2769.36 |
| - Garage gate replacement:                        | \$ 1478.47 |
| - Sub-total:                                      | \$20747.83 |

According to the monetary limit set by legislation, the landlord is entitled to recover \$4252.17 for any repairs.

Conclusion

The landlord has established a claim for \$25000.00 inclusive of the filing fee. I authorize the landlord to retain the tenant's \$1375.00 security deposit and pursuant to Section 67 of the Act, I grant the landlord a monetary order for the balance of \$23,625.00.

This Order may be registered in the Small Claims Court 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: March 24, 2011

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Residential Tenancy Branch