



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This conference call hearing was convened in response to the landlords' application for a Monetary Order for damage to the unit and for unpaid rent; to keep the security deposit; and to recover the filing fee associated with this application.

The landlords participated in the hearing and provided affirmed testimony. Landlord S.K. testified that she served the Notice of a Dispute Resolution Hearing to the tenant by way of registered mail sent November 30<sup>th</sup>, 2010, and for which she received notification of refusal of service on December 19<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 consists of a portion of the basement suite in a single family home. Landlord S.K. testified that she took possession of the property on March 26<sup>th</sup>, 2010 under the belief that the basement would remain fully tenanted.

She stated that tenant left on March 29<sup>th</sup>, 2010 without providing written notice. The monthly rent was \$600.00 and the tenant paid a security deposit of \$300.00.

In their documentary evidence, the landlords provided copies of invoices for cleaning and painting, and made the following claim:

- Painting and cleaning the tenant's unit:	\$ 1035.20
- Loss of one month's rent:	\$ 600.00
- Mailing fees:	\$ 22.61
- Filing fee:	\$ 50.00
- Less the security deposit:	\$ 300.00
- Total:	\$1407.81

S.K. stated that she received knowledge of the tenant's forwarding address as a result of the tenant's application for dispute resolution filed July 5<sup>th</sup>, 2010 for the return of the security deposit.

### Analysis

I accept landlord S.K.'s undisputed testimony that she served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. Refusing delivery of registered mail does not discharge the tenant's obligation towards the landlord. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

Section 45(1) of the Act states in part that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord received the notice. The landlord took over a tenancy that was void of any contractual agreement. Nevertheless, the tenant had a statutory obligation to give the landlord proper notice.

I find that the tenant did not comply with Section 45(1) of the Act and that the landlord is entitled to recover the loss of one months' rent for April 2010 for \$600.00.

In order to claim for damages or loss under the Act, the party making the claim bears the burden of proof. The landlord took possession of the property on March 26<sup>th</sup>, 2010 and the tenant left three days later. Proving a claim in damages or loss requires that it be established that they occurred as a result of the tenant's breach of the Act or the tenancy agreement. The landlord claimed \$1035.20 for cleaning and painting. Painting formed \$672.00 of that claim; however the landlord submitted no evidence on the last time the unit was painted, or on the condition of the walls at the start of the tenancy. Without condition inspection reports, I cannot make a decision on the strength of the invoice alone and I dismiss this portion of the landlord's claim for painting.

Section 37 of the *Residential Tenancy Act* provides in part that upon vacating a rental unit, the tenant must leave the unit reasonably clean and undamaged, except for reasonable wear and tear. The landlords provided photographs of soiled carpets and I accept their testimony regarding the cleaning aspect of the unit. The landlords provided receipts for \$263.20 and I award the landlord that claim.

There is no provision for a party to make a claim under the Act for the cost of registered mail related to an application for dispute resolution and I dismiss this portion of the landlord's claim.

The landlords established a claim of \$863.20. I find that their application had merit and that they are entitled to recover the \$50.00 filing fee for a claim totalling \$913.20.

### Conclusion

I authorize the landlords to keep the tenant's \$300.00 security deposit and pursuant to Section 67 of the Act, I grant the landlords a monetary claim for the balance of \$613.20.

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: April 06, 2011.

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Residential Tenancy Branch