



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNR, MNDC, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent / loss of revenue - Section 67;
2. An Order to retain the security / pet deposit - Section 38;
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy began on February 17, 2009 and ended on January 31, 2011. Rent in the amount of \$1,074.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$615.00. The Tenant gave notice to the Landlord on January 28, 2011 for ending the tenancy. The Tenant states that upon vacating the unit, he was informed by

the Landlord to drop off the keys as soon as possible as another person was interested in renting the unit. The Landlord states that the unit was advertised for rent in the local paper as of February 1, 2011 and that the advertisement has run continuously since that time. The Landlord states that the unit remains empty to this date due to market conditions and an abundance of vacancies.

No move-in or move-out condition inspection was offered or conducted by the Landlord. The Landlord states that the carpets, fridge, stove, bathroom were left unclean by the Tenant and provided cleaning receipts as evidence. The Tenant denies that the unit was unclean and further that the carpets had been cleaned by the Landlord in October 2010 due to a flood and water drainage in the apartment. The Landlord states that only part of the unit's carpets had been cleaned following the flood and in particular, none of the furniture was moved to clean the carpet. The Tenant states that all of the carpets were cleaned and that plastic had been placed under the furniture legs as a result.

The Landlord claims the following amounts: residual rent for February of \$1,041.00, parking for February of \$15.00, cleaning and maintenance supplies of \$220.00 and carpet cleaning of \$124.32, for a quantum monetary claim of **\$1,400.32**.

### Analysis

Where a Tenant wishes to end a month to month tenancy, the Act provides as follows:

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

By providing a one-day notice, the Tenant failed to meet the obligations required by the Act. The Landlord attempted to mitigate the loss of February rent by advertising the unit immediately but was unsuccessful. Accordingly, I find that the Tenant is liable for the

Landlord's loss of rental income for that month and that the Landlord has substantiated such loss.

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 24 of the Act further provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. As the Landlord failed to offer inspection reports at both move-in and move-out, I find that the right of the Landlord to claim against the damage deposit has been extinguished.

Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. Given the Tenants statement of cleanliness of the unit at the time of move-out, the lack of condition reports, and considering the Landlord only provided cleaning bills as evidence of the state of the unit after the move-out of the Tenant, I find that the Landlord has failed to provide a preponderance of evidence to the contrary and dismiss this part of the Landlord's application.

I find that the Landlord has established a monetary claim for **\$1,056.00** for loss of rental and parking revenue and is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$1,106.00**. The **security deposit** will be off-set from the award calculated as follows:

***Calculation for Monetary Order***

Loss of rent revenue	\$1,041.00
Loss of parking revenue	15.00
Filing Fees for the cost of this application	50.00
Less Security Deposit and interest <i>to date</i>	-615.00
<b>Total Monetary Award</b>	<b>\$491.00</b>

Conclusion

I **Order** that the Landlord retain the **deposit** and interest of \$615.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$491.00**. If necessary, this order may be filed 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 Act.

Dated: April 12, 2011.

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Residential Tenancy Branch