



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MND, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit, unpaid rent, and authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that the landlord's application and evidence were sent to the tenant's forwarding address via registered mail. The landlord provided a registered mail receipt and tracking information showing the tenant received the registered mail on February 7, 2011. I was satisfied the tenant was sufficiently served with the hearing documents and I proceeded to hear from the landlord without the tenant present.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit and unpaid rent?
2. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The fixed term tenancy commenced June 26, 2010 and was set to expire June 30, 2011. The tenant paid a \$675.00 security deposit and was required to pay rent of \$1,350.00 on the 1<sup>st</sup> day of every month.

I have summarized the landlord's claims against the tenant below:

<u>Description of item</u>	<u>Reason for claim</u>	<u>Amount claimed</u>
October 2010 rent	Cheque returned "funds frozen"	1,350.00
November 2010 rent	Cheque returned "payment stopped"	1,350.00
December 2010 rent	Cheque returned "payment stopped" Unit re-rented December 15, 2010. Claiming \$1,350.00 x 50%.	675.00
Bank fees	July – December 2010 rent cheques returned (6 x \$7.00)	42.00
Rent differential	Unit re-rented for \$1,200.00/month. Loss of rent for December 15 – 31, 2010	75.00
Rent differential	Unit re-rented for \$1,200.00/month. Loss of rent for January 2011 – June 2011 (6 months x \$150.00)	900.00
Lock change	Keys not returned	102.48
Cleaning	Unit was not left clean. Fridge, stove, bathroom, carpets and general cleaning required. Cleaning and small repairs done by landlord and her mother over two days.	250.00
Sub-total		<u>\$ 6,094.48</u>
Filing fee		100.00
TOTAL CLAIM		<u>\$ 6,194.48</u>

The landlord stated that in mid-October 2010 the tenant sent the landlord a text message informing the landlord that he had been posted for his job. The witness testified that he had a subsequent phone conversation with the tenant and reminded the tenant of his obligation under the fixed term tenancy agreement. The landlord received an email from the tenant on October 22, 2010 informing the landlord he would be moving out by November 15, 2010 and to keep the security deposit for the half-month's rent.

The landlord submitted that she began advertising the unit for rent on October 22, 2010 with an available possession date of November 15, 2010. When the landlord went to the show the unit in late October 2010 and early November 2010 she found the unit largely vacated. On November 23, 2010 he landlord and tenant exchanged emails with respect to getting the keys back. In early December the landlord requested the keys again via email. When the keys were still not returned by December 7, 2010 the

landlord had the locks changed. The tenant had the storage locker assigned to the unit cleaned out on December 8, 2010.

I noted during the hearing that the locksmith receipt was dated November 7, 2010 instead of December 7, 2010. The landlord explained that this must have been a typographical error by the locksmith. I requested the landlord provide me with proof of payment or a revised receipt showing the actual date of service. The landlord subsequently sent in a revised receipt dated December 7, 2010 and a bank statement showing the cheque to the locksmith was cashed December 10, 2010.

### Analysis

I have considered all of the evidence before me and I made the following findings with respect to the landlord's claims for compensation.

#### **Unpaid rent and loss of rent**

The Act requires that a tenant pay rent when due under the terms of the tenancy agreement. The tenant's rent cheques for September, October, November and December 2010 were returned by his financial institution and not replaced by an alternative means of payment.

I do not find the tenant entitled to end the tenancy part way through November 2010 as he attempted to do in his email communication to the landlord. Nor is a tenant entitled to give one month's notice as permitted for periodic (month-to-month) tenancies. If a tenant gives notice of his intent to vacate when under a fixed term tenancy the landlord may accept the notice and put the tenant on notice that the tenant will be held responsible for unpaid rent or loss of rent during the remainder of the fixed term. I am satisfied the landlord accepted that the unit would be vacated by November 15, 2010 since she began advertising the unit as available for that date. I am also satisfied the tenant was put on notice that he would be held responsible for unpaid and loss of rent for the remainder of the fixed term.

I find the landlord is entitled to recover unpaid rent for the months of September 2010 until the time the unit was re-rented on December 15, 2010. I award the landlord unpaid rent in the amount of \$4,725.00 [\$1,350.00 x 3.5 months].

Where a tenant ends a fixed term tenancy before the expiration of the fixed term the tenant is liable to compensate the landlord for a decrease in rent for the remainder of the fixed term. I am satisfied the landlord re-rented the unit for a

lesser rent of \$1,200.00 in order to attract a tenant sooner. I find that the landlord suffered a loss of rent of \$150.00 per month for the remainder of the fixed term due to the tenant's failure to fulfill the terms of the tenancy agreement. Therefore, I award the landlord the loss of rent of \$975.00 [150.00 x 6.5 months].

### **Bank fees**

The Residential Tenancy Regulations provide that a landlord may charge a tenant the bank fee incurred by the landlord when a tenant's cheque is returned. The landlord has provided copies of her bank statements and returned cheques to substantiate the landlord's claim for bank fees for the months of July 2010 through December 2010. I award the landlord bank fees for the returned cheques for July through November 2010 in the amount of \$35.00.

I deny the landlord's claim for the bank fee charged for December 2010. I find the landlord did not have a reasonable expectation that the tenant would have the funds available for December 2010 rent given the previous returned cheques and the fact the tenant had vacated the rental unit in November 2010, effectively bringing the tenancy to an end. Therefore, I find the bank fee associated to the landlord's decision to deposit the December 2010 cheque shall be the landlord's cost.

### **Locksmith cost**

I accept the revised receipt and proof of payment as evidence the landlord had the locks changed December 7, 2010. The tenant is required to return the keys and any means of access to the landlord at the end of the tenancy. The landlord's submissions satisfied me that the landlord gave the tenant a reasonable amount of time to return the locks and that he failed to do so by December 7, 2010. I find the landlord acted reasonably by proceeding to change the locks. I find the landlord entitled to recover the cost of this service from the tenant. The landlord is awarded \$102.48 for the cost of the locksmith.

### **Cleaning**

At tenant is required to leave a unit clean and undamaged at the end of the tenancy. The landlord described the extent of cleaning required during the hearing and, in the absence of any dispute from the tenant, I find the landlord's claim reasonable and I award the landlord \$250.00 for cleaning.

As the landlord was successful with this application I award the filing fee to the landlord. I also authorize the landlord to retain the security deposit in partial satisfaction of the amounts awarded to the landlord.

The landlord is provided a Monetary Order calculated as follows:

Unpaid rent to December 15, 2010	\$ 4,725.00
Loss of rent for December 15, 2010 – June 30, 2011	975.00
Bank fees	35.00
Locksmith costs	102.48
Cleaning	250.00
Filing fee	100.00
Less: security deposit	<u>(675.00)</u>
Monetary Order for landlord	\$ 5,512.48

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as an Order of that court.

### Conclusion

The landlord was largely successful in this application for compensation. The landlord is authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$5,512.48 to serve upon the tenant.

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: June 08, 2011.

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Residential Tenancy Branch