



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an a Monetary Order for unpaid rent, for damage to the unit, site or property and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement. The landlord also seeks an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on March 07, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

- Is the landlord entitled to keep the tenants security deposit?

### Background and Evidence

The landlord testifies that this month to month tenancy started on February 23, 2008 and ended on April 26, 2009. Rent for this unit was \$2,000.00 per month and was due on the 1<sup>st</sup> day of each month in advance. The tenant paid a security deposit of \$1,000.00 on February 23, 2008.

The landlord testifies that the tenant was a family friend and when he paid rent late the landlord states she did not always pursue him for this. However, she states the tenant owed \$967 in rent for November, 2008 and she issued him with a 10 Day Notice to End Tenancy on November 09, 2008. The tenant did not pay this outstanding rent but the landlord states she allowed him to stay at the unit as he was a family friend. The tenant did pay his rent for December, 2008 and for January and February, 2009. The landlord states she did accept this rent and did not issue a receipt for use and occupancy only.

The landlord testifies that in March 2009 the tenant only paid \$1,450.00 towards his rent and did not pay the balance of \$550.00. Another 10 Day Notice was issued to the tenant on March 14, 2009. The landlord states the effective date of this 10 Day Notice was March 23, 2009 due to \$550.00 in outstanding rent. The landlord states the tenant did not dispute the Notice and did not move from the rental unit until April 26, 2009. The tenant failed to pay rent for April to the sum of \$2,000.00. The landlord states the total amount of outstanding rent for November, 2008, March, 2009 and April, 2009 is now \$3,517.00.

The landlord seeks to keep the tenants security deposit of \$1,000.00 to offset against the unpaid rent. The landlord states she did not file her application to recover this rent sooner as the tenant kept telling her he would pay the arrears.

The landlord testifies that she did not conduct either a move in or a move out condition inspection of the rental unit at the start or end of the tenancy. She states however after the tenant had vacated she found he had caused damage in the unit and had left in unclean.

The landlord testifies that the tenant had ripped a door off its hinges, damaged the door trim and the door knob was broken off. The landlord seeks to recover \$197.85 to replace this door including the labour costs.

The landlord testifies that the tenant had made fist sized holes throughout the unit these were repaired at a cost of \$220.00. The landlord testifies that the tenant did not clean the unit at the end of the tenancy. They paid a sum of \$1,800.00 for cleaning and to have the unit repainted after the repairs to the walls were completed and \$214.75 for the paint.

The landlord testifies that the tenant damaged the sliding patio door screen. This cost \$35.40 to replace including labour.

The landlord testifies that the tenant did not clean the carpets at the end of the tenancy. These were left in a stained condition with urine and feces. Two carpets had to be replaced due to the urine including the underlay as the urine had soaked through. These were replaced at a cost of \$650.00 including labour.

The landlord testifies that all this work was carried out by a restoration company and there were additional taxes applied at that time of PST of \$47.64 and GST of \$155.90. The total amount of the invoice is \$3,321.54. The landlord has provided the invoice for this work and photographs showing the damage in the unit.

The tenant states her calculations were inaccurate when she filed her application on the monetary order worksheet and she seeks to amend her calculations to reflect the true cost of unpaid rent, repairs and cleaning.

The landlord also seeks to recover \$24.83 for the photographs she has provided in evidence.

### Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

In this matter I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

In the matter of the unpaid rent the landlord first served the tenant with a 10 Day Notice to End Tenancy for unpaid rent in November, 2008 and then did not follow through with this Notice at that time but did accept rent for December, 2008 which in effect reinstated the tenancy. The landlord then served the tenant with another 10 Day Notice to End Tenancy in March, 2009 and did not apply at that time to recover the unpaid rents. I accept the landlords' explanation that the tenant was a family friend who kept telling her he would pay the outstanding rent but the landlord still waited another year before filing her application.

A party has an obligation under s. 7(2) of the *Act* to mitigate their loss and this includes an obligation to bring a claim in a timely manner. Due to the fact the landlord has waited nearly two years to file her claim for unpaid rent; It is my decision that she did not mitigate her loss for the unpaid rent for November 2008 and as such I limit her claim to recover unpaid rent to the rent owed in 2009. Therefore it is my decision that the landlord is entitled to recover unpaid rent for March, 2009 and as the tenant overheld at the rental unit after the effective date of the 10 Day Notice the landlord is also entitled to recover unpaid rent for April, 2009 to the sum of **\$2,550.00**.

The landlord has also applied for damages and the same test applies in this instance. I have allowed the landlord to amend her monetary claim as she had an omission in the monetary calculation sheet. I find the landlord has provided an invoice showing the cost of the repairs and cleaning. She has also provided photographic evidence showing the condition of the rental unit at the end of the tenancy. The landlord has not provided any evidence to show that this damage or loss happened due to the actions or neglect of the tenant however the tenant has not disputed the landlords claim or taken part in the hearing today. Therefore I find it likely that the tenant was responsible for this damage and cleaning and consequently it is my decision that the landlord is entitled to recover the amount claimed for damage to the door, the walls, and the patio door screen and for work cleaning and painting the unit to the sum of **\$3,321.54**.

The landlord also seeks to recover the costs of having photographs developed at a cost of \$24.83 however this cost is deemed to be a cost of doing business as a landlord and therefore the landlord must bear this cost herself and this section of her claim is dismissed.

I Order the landlord to keep the tenants security deposit of \$1,000.00 and accrued interest of \$12.83 pursuant to section 38(4)9B) of the *Act*.

As the landlord has been largely successful with her claim I find she is entitled to recover the **\$50.00** filing fee pursuant to s. 72(1) of the *Act*. The landlord will receive a Monetary Order pursuant to s. 67 of the *Act* for the following amount:

Unpaid rent	\$2,550.00
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Damages and cleaning	\$3,321.54
Subtotal	\$5,871.54
Less security deposit and accrued interest	(-\$1012.83)
Plus filing fee	\$50.00
Total amount due to the landlord	\$4,908.71

Conclusion

I HEREBY FIND in partial favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,908.71**. The order must be served on the respondent and is enforceable through the Provincial Court 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: June 23, 2011.

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Residential Tenancy Branch