



# 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 was convened by way of conference call in repose to the landlords application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the rental unit?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep all or part of the security deposit?

### Background and Evidence

Both Parties agree that this month to month tenancy started on January 01, 2009. Rent for this unit was \$1,025.00 per month payable on the first day of each month in advance. The tenant paid a security deposit of \$512.50 on December 10, 2008. The parties also agree

that the tenant gave the landlord her forwarding address in writing dated July 15, 2011 and this was received by the landlord on July 21, 2011.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy on April 25, 2011. This Notice had an effective date of May 31, 2011 and gave one reason to end the tenancy:

*The tenant or a person permitted on the residential property by the tenant has*

- (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.*

The landlord testifies the tenant was then served with a 10 Day Notice to End Tenancy on May 06, 2011. This notice had an effective date of May 16, 2011 because the tenant had failed to pay all the rent due on May 01, 2011. The landlord testifies the tenant paid \$512.50 and now owes the sum of \$512.50 for the balance of rent for May, 2011. The landlord testifies that she had a conversation with the tenant concerning the rent and states she told the tenant she could pay \$512.50 if the tenant allowed the landlord to keep the balance of rent from the tenants' security deposit held in trust by the landlord.

The landlord testifies the tenant did not dispute either notice and moved from the rental unit on May 16, 2011. The landlord testifies the tenant did not leave the rental unit in a reasonably clean condition. The landlord originally made a claim for cleaning of the unit of \$200.00 but withdrew this claim during the hearing.

The landlord testifies the tenant left damage in a wall between the bathroom and one of the bedrooms. The landlord seeks to recover the sum of \$50.00 to repair this hole which had to be filled, sanded, and repainted.

The landlord seeks to keep the tenants security deposit of \$512.50 in satisfaction of the unpaid rent. The landlord seeks a Monetary Order for the wall repair and to recover the \$50.00 filing fee.

The tenant does not dispute that her children caused damage to the wall when they were playing and states she is happy to pay the landlord \$50.00 for this work. The tenant does dispute that she owes rent to the landlord. The tenant states she called the landlord on May 06, 2011 and informed her she would be moving out in the middle of May. The tenant states she moved from the rental unit in accordance with the date given on the One Month Notice. The tenant claims the landlord agreed she could just pay \$512.50 for the first two weeks of May, 2011 only.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I find the tenant has provided no corroborating evidence to support her claim that the landlord told the tenant she only had to pay half a month's rent for May, 2011. The landlord has disputed telling the tenant this and states she agreed that the tenant could pay half the rent only if the tenant gave the landlord permission to keep the security deposit to cover the other half. The tenant states she moved from the rental unit in accordance with the date given on the One Month Notice therefore argues the landlord is not entitled to recover rent after she moved out. The tenant is still responsible for the rent up to the end of May, 2011 whether or not she moved out in accordance with the dates given on either Notice. Therefore it is my decision that the landlord is entitled to make a claim for unpaid rent for \$512.50 for the balance of rent owed for May, 2011. I further find that pursuant to s. 38(4)(b) of the Act that the landlord is entitled to keep the tenant's security deposit to cover the balance of rent for May, 2011.

With regard to the landlords claim for damage to the wall; the tenant does not dispute that this damaged was caused by her children during her tenancy; consequently, I uphold the landlords claim for damages to the sum of \$50.00.

As the landlord has been successful with her claim I find she is entitled to recover the \$50.00 filing fee from the tenant pursuant to s. 72(1) of the Act.

A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$512.50
Security deposit plus accrued interest	(-\$512.96)
Damage to the wall	\$50.00
Filing fee	\$50.00
<b>Total amount due to the landlord</b>	<b>\$99.54</b>

#### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$99.54**. 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: October 24, 2011.

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Residential Tenancy Branch