



# 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 the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord entered into written evidence a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenants' door at 2:00 p.m. on May 6, 2011. The 10 Day Notice identified \$4,955.00 in unpaid rent owing as of May 1, 2011.

The landlord provided written evidence to confirm that the landlord sent a copy of the dispute resolution hearing package to all three of the tenants by registered mail on September 26, 2011. The landlord provided a copy of the Canada Post Tracking Numbers to confirm these mailings. I am satisfied that the landlord served these documents in accordance with the *Act*. The tenants attending confirmed that they had received the landlord's written evidence and that they had not submitted any written evidence themselves.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

This fixed term tenancy commencing on May 21, 2010 was scheduled to end on May 31, 2011. Monthly rent was set at \$1985.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$992.50 security deposit paid on April 10, 2010.

The landlord entered into written evidence a copy of the reports of the joint move-in condition of May 19, 2010 and the joint move-out condition inspection of May 28, 2011. The tenants maintained that they vacated by May 16, 2011, although the landlord said that the landlord did not obtain vacant possession until May 28, 2011 after the joint move-out condition inspection was completed.

The landlord applied for a monetary award of \$5,817.20, an amount which included the following items:

<b>Item</b>	<b>Amount</b>
Unpaid April 2011 Rent	\$1,985.00
Unpaid May 2011 Rent	1,985.00
Rent Owing from November 2010	685.00
NSF Fees	100.00
Late Fees	100.00
Garbage Removal	221.20
Cleaning	300.00
Removal of Items and Repairs	441.00
<b>Total Monetary Award Requested</b>	<b>\$5,817.20</b>

The landlord also applied to recover the filing fee for this application.

At the hearing, the parties agreed that the tenants paid \$100.00 towards the \$4,955.00 amount identified as owing in the 10 Day Notice on July 18, 2011. The tenants did not dispute the landlord's application for unpaid rent, for NSF fees or late fees arising out of this tenancy. The issues in dispute were the landlord's claim for garbage removal, cleaning, removal of items and repairs.

Tenant AB provided oral evidence on the tenants' behalf. Tenant AW said that she and a witness she had available if necessary at the hearing wished to speak to the tenants' ability to pay the monetary award requested by the landlord. As ability to pay a monetary award is not an issue that falls within the Act, I declined to hear evidence in this regard.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the undisputed evidence of the landlord, I find that the landlord is entitled to a monetary award for unpaid rent for April 2011 in the amount of \$1,985.00, for May 2011 in the amount of \$1,985.00, and for November 2010 in the amount of \$685.00, for NSF cheque fees in the amount of \$100.00, and for \$100.00 in late fees arising out of this tenancy. I reduce the amount of this monetary award by the \$100.00 that the tenants paid on July 18, 2011.

In support of the landlord's claim for a monetary award for cleaning and damage arising out of this tenancy, the landlord noted that Tenant AB participated in and signed the joint move-out condition inspection on May 28, 2011. This report included Tenant AB's written agreement that there was garbage, debris and furniture that had to be removed at the end of this tenancy and cleaning that was required. The landlord entered into written evidence two invoices from a construction company that hauled garbage and debris from the rental property and removed and replaced a bedroom window. The first of these invoices for \$221.20 was to haul garbage to the dump on June 3, 2011. The second of these invoices for \$441.00 was for removal of additional garbage and a barbeque on June 27, 2011 and for removal and replacement of the window on June 30, 2011. Tenant AB asserted that the second invoice was a double billing of the removal of garbage and debris arising out of this tenancy. The landlord explained that the window had to be ordered from the supplier and the landlord was in no hurry to complete this work as he was considering selling the property instead of renting it to another tenant. Tenant AB also said that the person who conducted the move-out inspection for the landlord told her that she wanted the barbeque herself and that she could leave this behind.

Based on my review of the landlord's written evidence, particularly the joint move-in and move-out condition inspection reports and the wording of the invoices from the construction company, I find that the landlord is entitled to recover \$221.20 and \$441.00 for damage caused by the tenants during this tenancy. Although Tenant AB testified that the rental unit was not in good condition when the tenants moved into this rental

unit, I find that the joint move-in and move-out condition reports demonstrate a significant deterioration in the condition of the rental unit during the course of this tenancy. I find that there was no double-billing in these claims for damage as the invoices identify different specific items that had to be removed and, in the case of the window, replaced.

Based on a balance of probabilities, I find that the landlord is entitled to a monetary award in the amount of \$300.00 for cleaning that was required after this tenancy ended. This cleaning occurred on June 24, 2011, within a month of the joint move-out condition inspection. In making this decision, I note that Tenant AB agreed in the joint move-out condition inspection report that cleaning was required at the end of this tenancy. I find little merit to Tenant AB's claim that the landlord should not be entitled to a full reimbursement for the cleaning and garbage removal costs because they had to vacate their tenancy before the end of the month. They did so because the landlord had issued a 10 Day Notice in which the landlord clearly identified the date by which they would need to end their tenancy if they did not pay their significant outstanding rent. Although the tenants remained responsible for rent for the remainder of May 2011, this did not allow them additional time to clean the rental unit after their tenancy ended.

I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award issued in the landlord's favour. No interest is payable over this period.

Since the landlord has been successful in this application, I allow the landlord to recover the landlord's \$100.00 filing fee from the tenants.

### Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover unpaid rent, losses and damage arising during this tenancy, the filing fee for this application, and to retain the tenants' security deposit.

<b>Item</b>	<b>Amount</b>
Unpaid April 2011 Rent	\$1,985.00
Unpaid May 2011 Rent	1,985.00
Rent Owing from November 2010 Less \$100 Payment of July 18, 2011 (\$685.00 - \$100.00 = \$585.00)	585.00
NSF Fees	100.00
Late Fees	100.00
Garbage Removal	221.20
Cleaning	300.00
Removal of Items and Repairs	441.00
Less Security Deposit	-992.50
Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$4,824.70</b>

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: December 08, 2011

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Residential Tenancy Branch