



# 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; 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 deposit; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, handed to the tenant in person on November 08, 2011.

The landlord appeared, gave sworn testimony, was provided the opportunity to present his 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 for unpaid rent?
- Os the landlord entitled to a Monetary Order for damage to the unit, site or property?

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

### Background and Evidence

The landlord testifies that this tenancy started on March 16, 2011. This was a fixed term tenancy which was due to expire on March 31, 2012. The tenant moved from the rental unit on July 29, 2011. Rent for this unit was \$1,100.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$550.00 on March 20, 2011.

The landlord testifies that he received an e-mail from the tenant on July 29, 2011 which informed the landlord that the tenant would be vacating the rental unit on that day. The landlord seeks to recover a loss of rental income for August, 2011 to the sum of \$1,100.00 as the tenant gave improper notice to end the tenancy and the unit was not re-rented until September 01, 2011.

The landlord testifies that the tenant failed to clean the rental unit at the end of the tenancy. The landlord seeks to recover the sum of \$75.00 paid to a cleaning lady. The landlord testifies that this cleaning lady also cleaned the carpets which the tenant had left in a dirty condition. The landlord seeks to recover the sum of \$65.00 for this work.

The landlord testifies that the tenant left dressers and beds behind at the unit when she moved out. The landlord testifies that these had a value of less than \$500.00 and the landlord states he had to remove these items and dispose of them at the dump. The landlord seeks to recover the sum of \$40.00 for this work.

The landlord testifies that the tenant damaged a shower handle and the landlord seeks to recover the sum of \$2.00 to replace this. The landlord testifies that the tenant also

caused damage to a mini blind by leaving the blind twisted and bent. The landlord seeks to recover the sum of \$18.00 to replace this blind.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord. With regard to the landlords claim for unpaid rent; a tenant is not entitled to end a fixed term tenancy before the end of the fixed term and then must give the landlord at least one clear months notice to end the tenancy. This tenancy was not due to end until March 31, 2012, consequently, I find the tenant has breached the tenancy agreement by ending the tenancy on July 29, 2011 and the landlord is entitled to recover rent up to the date the unit was re-rented. Therefore, it is my decision that the landlord is entitled to recover rent for August, 2011 to the sum of **\$1,100.00**.

With regards to the landlords claim for damage and cleaning; the onus is on the landlord to prove a 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The actual amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

I have no evidence before me to show that the damage exists or that the tenant left the rental unit in an unclean condition at the end of the tenancy. I have no evidence to show that the damage was caused as a result of the actions or neglect of the tenant and I have no evidence before me to the actual amount for repairs, cleaning and furniture removal. Therefore, I find that the landlord has failed to satisfy elements 1, 2 and 3, and consequently, the landlord's claim for damages cannot succeed.

The landlord is entitled to keep the tenants security deposit of \$550.00 pursuant to s. 38 (4)(b) of the *Act*. This amount will be offset against the unpaid rent

As the landlord has been partially successful with his claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the Act. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the Act as follows:

Unpaid rent	\$1,100.00
Filing fee	\$50.00
Less security deposit	(-\$550.00)
Total amount due to the landlord	\$600.00

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$600.00. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The remainder of the landlords claim is dismissed without leave to reapply.

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: January 25, 2012.

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Residential Tenancy Branch