



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      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 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 tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:49 a.m. in order to enable them to connect with this hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord entered into written evidence a copy of the tenants' notice to end this tenancy as of October 31, 2011, left in the landlord's mail slot on October 24, 2011. The landlord testified that an initial attempt to send the tenants a copy of the landlord's dispute resolution hearing package was unsuccessful as the landlord had incorrectly sent the packages by registered mail to an incorrect address. The landlord testified that he sent these packages to the correct mailing address as provided by the male tenant at the time of the move-out condition inspection by registered mail on November 18, 2011. He provided Canada Post Tracking Numbers to confirm the mailing of these packages to both tenants. He said that the packages were returned as undelivered by Canada Post. In accordance with section 90 of the *Act*, I am satisfied that the tenants were deemed to have been served with these packages on the fifth day after they were mailed, November 23, 2011.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent 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 periodic tenancy commenced on August 1, 2011. Monthly rent was set at \$895.00, payable on the first of each month. There was a monthly parking charge of \$25.00. The landlord continues to hold the tenants' \$477.50 security deposit paid on August 4, 2011.

The landlord's application for a monetary award of \$604.50 and authorization to retain the tenants' security deposit listed the following items:

Item	Amount
Unpaid November 2011 Rent	\$895.00
Unpaid November 2011 Parking	25.00
Suite Cleaning and Supplies	45.00
Building - Key Replacement	25.00
Drapes/Blinds	15.00
Recovery of Filing Fee for this application	50.00

The landlord entered into evidence a copy of the joint move-in condition inspection report of July 29, 2011 and the joint move-out condition inspection report of October 31, 2011. The move-out report included a Security Deposit Statement signed by the male tenant in which he agreed that the landlord could deduct \$85.00 from the tenants' security deposit for suite cleaning/supplies, drapes/blinds and the key replacement.

The landlord testified that the actual cleaning costs were \$36.00 as indicated on an invoice the landlord entered into written evidence. The landlord testified that the tenants did not return one of the keys to the entrance of this rental building which incurred the \$25.00 charge to the landlord.

### Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for November 2011, the tenants would have needed to provide their written notice to end this tenancy before October 1, 2011. As that did not occur and there is undisputed evidence that the tenants did not pay any rent for November 2011, I find that the tenants did not comply with the provisions of section 45(1) of the *Act*.

However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. The landlord testified that the landlords advertised the availability of this rental unit on the landlord's website, placed newspaper advertisements and listed the rental unit on Craigslist. He said that the first advertisements were placed on November 1, 2011. The landlord said that he has still not been able to re-rent the premises, although it appears that a prospective tenant may be signing a tenancy agreement to take effect in March 2012.

The one week delay in initiating efforts to re-rent this suite is of some concern as is the landlord's failure to provide any written evidence regarding the landlord's efforts to mitigate the tenants' responsibility for unpaid rent for November 2011. However, the landlord gave undisputed oral testimony that he is still seeking tenants three months after the end of this tenancy. Although I am concerned about the one week delay in commencing the advertising process, it seems unlikely that the landlord would have been able to locate a tenant a few days after the tenants gave their notice to end this tenancy when the landlord remains unable to rent this suite three months later. For these reasons, I am satisfied that the landlord has taken sufficient steps to mitigate the tenants' responsibility for unpaid rent for November 2011 and has discharged the duty under section 7(2) of the *Act* to minimize the tenants' loss. For these reasons, I find that the landlord is entitled to a monetary award of \$895.00 for unpaid rent for November 2011.

I dismiss the landlord's claim for recovery of the monthly parking fee without leave to reapply as the landlord provided no evidence regarding attempts, if any, to mitigate any loss to which the landlord might be entitled for this item.

I allow the landlord's claim for cleaning in the amount of \$36.00, the actual amount identified in the invoice submitted into written evidence by the landlord. I also allow the landlord's claim for \$15.00 for drapes/blinds and \$25.00 for replacement of the lost key, both items identified in the male tenant's written agreement to withhold a portion of the security deposit.

As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenants.

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

Conclusion

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

<b>Item</b>	<b>Amount</b>
Unpaid November 2011 Rent	\$895.00
Suite Cleaning	36.00
Building - Key Replacement	25.00
Drapes/Blinds	15.00
Less Security Deposit	-477.50
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$543.50</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant 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: February 03, 2012

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Residential Tenancy Branch