



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MND, MNSD, MNDC, MNRFF

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for \$1,432.00 rent owed, \$25.00 late fees, \$25.00 NSF fees, \$25.00 remaining fines imposed by the Strata Corporation and \$275.00 for cleaning costs.

Both parties appeared at the hearing and gave evidence.

### **Issue(s) to be Decided**

The issue to be determined, based on the evidence, is whether the landlord is entitled to compensation under section 67 of the *Act* for damages and unpaid rent.

### **Background and Evidence**

The landlord testified that the tenancy began on June 1, 2011 and ended on November 30, 2011. The monthly rent was \$1,432.00 and the security deposit paid was \$700.00. A copy of the tenancy agreement, condition inspection reports and tenant ledger were in evidence.

The landlord testified that the tenant failed to pay \$1,432.00 rent for November 2011 and also owes \$25.00 for the late charges and \$25.00 for an NSF cheque, pursuant to the tenancy agreement. With respect to the payment of fines to the strata, the landlord stated that they had collected \$75.00 of a \$100.00 fine imposed by the Strata and \$25.00 was still outstanding. No evidence of the violation nor charge by the Strata was submitted, and the tenant disputed that the fine was justified.

The landlord testified that when the tenant vacated, the unit was not left reasonably clean and the landlord incurred a cost of \$275.00 which is being claimed.

### **Analysis**

Section 26 of the *Act* states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement. I find that the tenant failed to pay rent for November 2011 and the

landlord is entitled to be compensated \$1,432.00 as well as the \$25.00 late fee and the \$25.00 NSF fee.

Section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with this Act, the regulations or their tenancy agreement. Section 67 of the Act grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

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

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The tenant did not dispute that the unit was left in an unclean state and I find that the landlord is entitled to be compensated \$275.00.

With respect to the claim for the fines from the strata council, I find that the landlord had imposed the charges for damages without first obtaining an order through dispute resolution. Due to insufficient evidence regarding the tenant's role in violating the Strata rules, I find that the landlord is not entitled to be compensated and must credit the tenant with the \$75.00 already collected.

Given the above, I find that the landlord has proven entitlement to compensation of \$1,732.00 comprised of \$1,432.00 rent, \$25.00 late fees, \$25.00 NSF fees and the \$50.00 cost of the application, minus the \$75.00 already paid by the tenant for the

unproven Strata fines. I order that the landlord retain the \$700.00 security deposit in partial satisfaction of the claim, leaving \$1,032.00 still remaining.

**Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to total monetary compensation in the amount of \$1,032.00. I hereby grant the landlord a monetary order under section 67 of the *Act* for \$1,032.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced 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: February 29, 2012.

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Residential Tenancy Branch