



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNSD, OPR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order for unpaid rent, for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed the landlord could amend his application to include the two walls that were painted black in the rental unit.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for damages to the unit?

Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

The tenancy began on September 30, 2011. Rent in the amount of \$1,800.00 was payable on the first of each month. A security deposit of \$900.00 was paid by the tenants. The tenancy ended May 31, 2012.

Based on the affirmed testimony of the landlord, I find that the tenants were served with a Notice to End Tenancy for non-payment of rent. The tenant agreed the outstanding rent was not paid as it was withheld due to the landlord not addressing their concerns. The tenants did not apply to dispute the Notice and accepted that the tenancy ended on the effective date of the Notice.

The landlord testified the tenants were late paying rent each month of the tenancy and is seeking compensation for late fees as specified in the tenancy agreement in the amount of \$200.00. Filed in evidence is a copy of the tenancy agreement.

The tenant testified that he has not been late with every rent payment due under the tenancy agreement.

The landlord testified the tenants rent cheques were returned for insufficient funds on three occasions and the landlord is seeking compensation for the insufficient funds fees charged in the amount of \$75.00. Filed in evidence are the three cheques returned for insufficient funds.

The tenant testified that he paid the landlord two of the insufficient fees with cash.

The landlord testified the tenants painted two walls black in the rental unit. The landlord is seeking compensation to the amended amount of \$400.00.

The tenant agreed that he painted two walls with chalk paint. The tenant stated that \$400.00 to paint the two walls is excessive.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Although the landlord is entitled to an order of possession in these circumstances, the tenants have vacated the rental unit and therefore, an order of possession is no longer required.

The evidence of the tenant was rent was withheld until the landlord address the concerns in the rental unit.

### Section 26 of the Act - Rules about payment and non-payment of rent

**26** (1) 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.

The tenants did not have a right under the Act to withhold rent. Therefore, I find the tenants were in breach of the Act. The landlord is entitled to compensation for unpaid rent for the month of May 2012, in the amount of **\$1,800.00**.

The landlord has provided insufficient evidence to prove the tenants were late with rent for every month during the tenancy. However, the documentary evidence of the

landlord support the tenants were late on three occasions and the tenants have not paid May 2012, rent. Therefore, I find the tenants were late on four occasions and I grant the landlord compensation in the amount of **\$100.00**.

The evidence of the landlord was the tenants did not pay the insufficient funds fees. The tenant's evidence he paid two of those fees in cash. In this case the onus is on the tenant to prove he paid these fees. As the tenant replaced the returned cheques with new cheques, I find that it would have been more probable to pay both by cheque to prove payments were made. Therefore, I find the landlord is entitled to recover the insufficient funds fees in the amount of **\$75.00**.

The evidence of the landlord was that it would cost \$400.00 to paint two walls. The evidence of the tenant was this amount is excessive and believes it should cost no more than \$200.00 for both. As the landlord has failed to prove the actual amount it will cost as there were no estimates or receipts provided and I agree \$400.00 is excessive for two walls. Therefore, I will allow the landlord compensation to paint the two walls in the amount of **\$150.00**.

I find that the landlord has established a total monetary claim of **\$2,175.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$900.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,275.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The landlord is granted a monetary order, and may retain the security deposit in partial satisfaction of the claim and the landlord is granted a monetary order for the balance due.

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: June 07, 2012.

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Residential Tenancy Branch