



# 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 respondent's 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 respondent pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The parties agreed that this tenancy ended on March 30, 2012 when the tenant(s) moved out of the rental unit on the basis of their March 9, 2012 written notice to end this tenancy. The landlord testified that on April 19, 2012 a copy of the landlord's dispute resolution hearing package was handed to the respondent's son, Eric, who was residing in the rental unit. The respondent confirmed that his son forwarded this package to him well in advance of this hearing. I am satisfied that the above documents were served to one another in accordance with the *Act*.

At the commencement of the hearing, the respondent testified that he was not in fact the tenant and that the landlord had incorrectly identified him as such. Although he confirmed that he and his wife had been issuing the rent cheques during this tenancy, the tenants were actually his son, Eric, and his roommate. The respondent noted that both he and his son had tried to obtain a written tenancy agreement from the landlord, but none had ever been created. The landlord confirmed that the landlord has no copy of a written tenancy agreement for this tenancy.

### 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 a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the security deposit for this

tenancy in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the respondent?

### Background and Evidence

The parties agreed that this six-month fixed term tenancy commenced on September 1, 2011. Although the respondent maintained that the tenancy was to end on February 29, 2012 and no further rent should be owed after that date, there was no written agreement as to what was to happen at the end of the tenancy if the tenancy continued and no additional agreement was established. Since the tenancy continued after February 29, 2012, I advised the parties that the original fixed term tenancy continued as a periodic tenancy as of March 1, 2012. Monthly rent was set at \$1,300.00, payable in advance on the first of each month. The parties agreed that the landlord continues to hold the \$650.00 security deposit for this tenancy paid presumably by the respondent and his wife on August 21, 2011.

The parties agreed that a joint move-in condition inspection was conducted on September 3, 2011 with the roommate of the respondent's son. A joint move-out condition inspection was conducted with the respondent's son on March 30, 2012. At that time, the landlord testified that the respondent's son provided a forwarding address where the security deposit for this tenancy could be returned. Although the respondent agreed that he received a copy of the inspection reports for both the joint move-in and move-out inspections, the landlord did not submit these reports into written evidence.

The landlord's claim for a monetary award of \$1,232.65 included the following items listed in the Details of the Dispute section of the landlord's application for dispute resolution:

<b>Item</b>	<b>Amount</b>
Loss of Rent April 2012	\$1,300.00
Carpet	106.40
Drapes	30.00
Cleaning	100.00
Cleaning Materials	20.00
Painting	175.00
Painting Materials	61.25
Repairs	40.00
Less Security Deposit	-650.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award Requested</b>	<b>\$1,232.65</b>

Other than two lines in the Details of the Dispute section of the landlord's application form, the landlord did not provide any written evidence to the Residential Tenancy Branch in support of the application for a monetary award. The respondent did not provide any written evidence.

### 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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to resolve all issues in dispute arising out of this tenancy under the following terms:

1. Both parties agreed that all monetary issues arising out of this tenancy will be resolved by the landlord's retention of all of the \$650.00 security deposit paid for this tenancy.
2. Both parties agreed that this settlement agreement constituted a final and binding resolution of all issues arising out of this tenancy and that neither party will submit further applications for dispute resolution arising out of this tenancy.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties.

### Conclusion

In order to implement the above settlement reached between the parties, I order that the landlord is allowed to retain the \$650.00 security deposit paid for this tenancy.

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 14, 2012

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Residential Tenancy Branch