



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, MNR, (MND), FF

### Introduction

This hearing was convened by way of conference call in response 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*, and was served upon the tenant in person on August 31, 2012.

The landlord and a witness for the landlord appeared, gave sworn testimony, were provided the opportunity to present 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 damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep the tenants security deposit?

### Background and Evidence

The landlord testifies that this tenancy started on January 15, 2010 for a fixed term which expired on January 31, 2011. The tenancy then reverted to a month to month tenancy.

Rent for this unit was \$1,400.00 per month due on the first day of each month. The tenant

paid a security deposit of \$700.00 on January 04, 2010. The landlord testifies that originally there were two tenants residing in the rental unit. The female tenant moved out and the tenancy continued with this tenant.

The landlord testifies that the tenant failed to pay all the rent owed for July, 2012 leaving an unpaid balance of \$700.00. The tenant failed to pay any rent for August, 2012. The total amount of unpaid rent is \$2,100.00. The landlord testifies he served the tenant with a 10 Day Notice to End Tenancy on August 20, 2012 and the tenant moved from the rental unit on August 31, 2012. The landlord seeks to recover the unpaid rent of \$2,100.00. The landlord has provided a copy of the tenants rent ledger in evidence.

The landlords witness testifies that the tenant left the carpets in the rental unit in a filthy condition. The landlords witness did attempt to clean the carpets with a borrowed carpet cleaner but had to purchase carpet cleaning solution at a cost of \$34.14. This did not remove the stains so the landlord hired a professional carpet cleaner at a cost of \$243.04. The landlord has provided receipts for the carpet cleaner and the carpet cleaning solution in evidence along with photographic evidence showing the staining on the carpets.

The landlords witness testifies that the tenant caused some damage to the unit, site and property. The tenant had driven a vehicle on the lawn which damaged the underground sprinkler system, a bathroom fan had been damaged and taken out of the ceiling, a laundry room door was missing, other minor repairs and adjustments were made. The landlord's witness testifies that the landlord has a building company and he used one of his own contractors to make the repairs to the rental unit. The landlord has provided an hourly breakdown of the repairs made from this contractor at an hourly rate of \$45.00 for 26 hours to a total sum of \$1,170.00. The landlord has provided a copy of the time sheet in evidence.

The landlords witness testifies that they had to pay \$315.00 to remove and haul the tenant's garbage to the dump. This work took nine hours to complete and the landlord was charged \$35.00 per hour. The landlords witness testifies that the contractor who did this work had to sort through all the garbage to separate anything that was recyclable such as old tires. The landlord has provided photographic evidence of the garbage left at the unit.

The landlords witness testifies that the tenant left the rental unit in a dirty condition and the witness spent 23 hours cleaning the rental unit. The witness charges \$25.00 per hour for this work to a total sum of \$575.00. The witness testifies that the landlords wife also assisted in the cleaning and worked for 18 hours at an hourly rate of \$25.00 to a total sum of \$450.00.

The landlords witness testifies that the tenant left some damage on the walls with gouges and dings out of the walls. The walls had to be filled and repainted by the witness and the landlord's wife and they worked for 10 hours and seek \$25.00 per hour to a total sum of \$250.00. The landlords witness testifies that they also had to purchase paint and filler for this work and have provided a receipt for this paint and filler to an amount of \$141.58.

The landlord testifies that the total amount spent to rectify the damage and cleaning of the unit came to \$3,178.76.

The landlord seeks an Order to be permitted to keep the tenants security deposit to offset against the unpaid rent and damages. The landlord also seeks to recover the filing fee of \$50.00.

### Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and sworn testimony before me from the landlord and the landlord's witness.

With regard to the landlords claim for unpaid rent; section 26 of the *Act* states:

*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.*

Consequently I am satisfied from the evidence presented that the tenant failed to pay rent of \$700.00 for July, 2012 and the rent for August, 2012 of \$1,400.00. The landlord is entitled to a Monetary Order to the sum of \$2,100.00 pursuant to s. 67 of the *Act*.

With regard to the landlords claim for damages and cleaning of the rental unit; the landlord has established that the tenant failed to clean the carpets at the rental; unit and that the carpets were left stained. The landlord has also established that the tenant failed to clean the rental unit or remove a substantial amount of garbage and personal items which the landlord paid to remove.

The landlord has not however established that the tenant was responsible for damage to the sprinkler system. I have no documentary evidence to support the landlords claim that this system was damaged by the actions or neglect of the tenant in violation of the *Act* or tenancy agreement. I further find the landlord has not established that the tenant removed a laundry room door or damaged and removed a bathroom fan through his actions or neglect and the landlord has shown no other repairs or minor adjustments that were beyond normal wear and tear. The landlord has provided a time sheet from his contractor however no other evidence to establish that the tenant was responsible for these repairs. The landlords witness has testified that the tenant left the walls in the rental unit with gouges and dings which had to be repaired by the landlords witness and the landlords wife, however the landlord has no evidence to support this section of their claim as the landlord has not provided any photographic evidence or a copy of the move in and move out condition inspection reports to show this damage exists or that it was beyond normal wear and tear. Consequently this section of the landlords claim is dismissed.

As the landlord has been partially successful with this claim I find the landlord is entitled to keep the tenants security deposit of \$700.00 pursuant to s. 38(4)(b) of the *Act*. I further find as the landlord has been partially successful with this claim that the landlord is entitled to recover the \$50.00 filing fee from the tenant pursuant to s. 72(1) of the *Act*.

A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$2,100.00
Carpet cleaning and supplies	\$277.18
Cleaning	\$1,025.00
Garbage removal	\$315.00
Filing fee	\$50.00
Less security deposit	(-\$700.00)
Total amount due to the landlord	\$3,067.18

### 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 **\$3,067.18**. The order must be served on the respondent and is enforceable through the Provincial Court 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: November 14, 2012.

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Residential Tenancy Branch