



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNSD, MNR, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the landlord.

The landlord submitted documentary evidence to confirm the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on September 18, 2012 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5<sup>th</sup> day after it was mailed.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and fees; for cleaning and repairs; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Act*.

### Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on July 3, 2009 for a 1 year fixed term tenancy beginning on August 1, 2009 and converting to a month to month tenancy on August 1, 2010 with a monthly rent of \$2,200.00 due on the 1<sup>st</sup> of each month with a security deposit of \$1,100.00 paid.

The tenancy ended on August 31, 2012 after the tenant provided the landlord, on August 14, 2012, with a notice, by email, of her intention to end the tenancy at the end of August 2012. The tenant provided the landlord with her forwarding address by email on September 5, 2012.

The landlord also provided a copy of a tenant ledger showing the rent had increased during the tenancy to \$2,250.00 per month on January 1, 2012. The ledger indicates

the tenant failed to pay the additional \$50.00 per month from the effective date of the rent increase to the end of the tenancy.

The landlord also testified that that while the tenant had been provided with rent free for the month of February 2012 the tenant also did not pay any rent for the month of March 2012 despite being requested to do so.

According to the landlord's testimony the tenant was under the mistaken belief the landlord had authorized two month's rent free. The landlord seeks compensation in the amount of \$2,475.00 for all of the unpaid rent as well as a \$25.00 late payment fee the tenant's cheque for March 2012 rent that was returned as payment stopped.

The landlord has provided a copy of a Condition Inspection Report recording the condition of the rental unit at both the beginning and the end of the tenancy as well as a copy of a Notice of Final Opportunity to Schedule a Condition Inspection setting the final inspection to be conducted at 10:00 a.m. on August 30, 2012. The landlord also provided, into evidence, several photographs documenting the condition of the rental unit at the end of the tenancy.

The landlord seeks compensation for cleaning and repairs as outlined in the table below:

Description	Amount
Window covering cleaning	\$50.00
General Cleaning	\$300.00
Damage Repairs/Painting	\$479.00
Garbage removal	\$62.00
<b>Total</b>	<b>\$1,115.00</b>

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 26 stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Rights under the *Act* include: authorization from the landlord; the tenant has had

to use the money for emergency repairs that the landlord has failed to make; or the tenant has obtained an order through the Dispute Resolution process allowing her to withhold rent.

I find, based on the undisputed testimony of the landlord's agents that the tenant failed to pay rent for the month of March 2012 without any right under the *Act* to withhold the payment and that the tenant failed to pay the required rent increase for the duration as outlined by the landlord and the stopped cheque fee.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Based on the undisputed Condition Inspection Reports and the photographic evidence I find the tenant failed to comply with the requirements under Section 37. As a result I find the landlord has suffered a financial loss and that the landlord has established the value of that loss through their documentary evidence and testimony to be reasonable costs to complete the cleaning and repairs required.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,640.00** comprised of \$2,475.00 rent and fees owed; \$1,115.00 cleaning and repairs; and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit held in the amount of \$1,100.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,540.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 5, 2012.

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Residential Tenancy Branch