



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, O

### 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 the landlord only.

The landlord provided 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 October 19, 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; for damage to the rental unit; for damage or loss; 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 January 25, 2011 for a 18 month fixed term tenancy beginning February 1, 2011 for a monthly rent of \$1,200.00 due on the 1<sup>st</sup> of each month with a security deposit of \$600.00 paid on January 23, 2010.

The tenancy agreement included a liquidated damages clause that stipulates that if the tenant ends the tenancy before the end of the term (July 31, 2012) the tenant will pay

the landlord \$400.00 as a pre-estimate of the landlord's costs to re-rent the rental unit. The landlord claims only \$300.00 in her Application.

The landlord has submitted copies of additional fixed term tenancy agreements showing the tenant had held possession of the rental unit since January 25, 2010.

The landlord testified the tenant failed to pay rent for the month of June 2012 and that the tenant had advised the landlord on June 23, 2012 via email that she would be moving out in the next day or two. The landlord responded by email advising the tenant that they would have to conduct a move out inspection.

The landlord never heard from the tenant again. In, fact the landlord hired an investigator to locate the tenant to pursue her claim. The landlord seeks compensation in the amount of \$224.00 for these costs.

The landlord has submitted into evidence a copy of a condition inspection reports completed prior to the start of the original tenancy and at the end of this tenancy on June 29, 2012 as well as photographic evidence to substantiate the condition. The landlord has provided receipts for her claims.

The landlord claims the following as a result of the condition of the rental unit:

Description	Amount
Carpet cleaning	\$329.17
Cleaning supplies	\$162.50
Cleaning of house and yard	\$720.00
Garbage removal	\$34.00
Painting	\$340.00
Damage Repair	\$637.31
Key Replacement	\$77.19
<b>Total</b>	<b>\$2,300.17</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.

On the issue of rent, I accept the landlord's undisputed rent that the tenant failed to provide a payment for rent for the month of June 2012.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

As such, despite the evidence of emails during the month of June 2012 provided that shows the tenant was contemplating leaving the tenancy it was not until June 23, 2012 that the tenant confirmed her intention to vacate the property within a day or two. However, as the tenancy was a fixed term due to end at the end of July 2012 the earliest the tenant could have ended the tenancy was July 31, 2012 to be compliant with Section 45(2).

Therefore, I find the tenant is responsible for the payment of rent for the month of July, 2012.

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.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Based on the undisputed testimony and evidence of the landlord I find the landlord is entitled to compensation in the amount claimed for liquidated damages and for cleaning and repairs. However, the cost to locate the tenant I find to be a cost of doing business and therefore not recoverable.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$5,050.17** comprised of \$2,400.00 rent owed; \$300.00 liquidated damages; \$2,300.17 repairs and cleaning; 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 \$600.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$4,450.17**.

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: January 30, 2013

---

Residential Tenancy Branch

