



# 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 applications by the landlord and the tenant. The landlord applied for monetary compensation and an order to retain the security deposit in partial compensation of the monetary claim. The tenant applied for recovery of the security deposit. The tenant named on the tenancy agreement is a corporate entity; the occupant and an agent for the corporate tenant, as well as the landlord, participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

The landlord stated at the outset of the hearing that he was calling in to the hearing from overseas, using VoIP (Voice over Internet Protocol). Several times during the hearing the landlord was disconnected from the teleconference, and the tenants and I waited on the line for the landlord to call back into the hearing. Near the end of the hearing, the landlord was disconnected for approximately 12 minutes. At that time, I informed the tenants that I was satisfied with the testimonial and other evidence presented on both claims. The tenants disconnected from the hearing, and when the landlord returned on the line I informed him as well that I was concluding the teleconference hearing and would reach my decision based on the testimonial and documentary evidence provided.

I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?  
Is the tenant entitled to recovery of the security deposit?

Background and Evidence

*Undisputed Facts*

The tenancy began on September 1, 2012 as a fixed-term tenancy to end on February 28, 2013, with monthly rent of \$2400 to be paid in advance on the first day of the month. The rental unit is a condo in a strata building. At the outset of the tenancy the tenant paid the landlord a security deposit of \$1200. The landlord and an agent for the tenant carried out a move-in inspection and completed the condition inspection report on August 30, 2012.

On December 14, 2012 there was a flood on the 25<sup>th</sup> floor of the building, which resulted in water damage to several suites on lower floors, including the rental unit. The strata hired a restoration company to do repairs. The occupant moved out of the rental unit in January 2013, and the agent for the tenant carried out a move-out inspection with the landlord. The agent for the tenant agreed on the condition inspection report that a desk in the rental unit had several damaged areas on its surface.

*Landlord's Evidence*

The landlord claimed \$2400 in lost revenue for February 2012 and \$200 for damage to the desk in the rental unit. The landlord stated that the rental unit was still in a liveable condition while renovations were taking place, and it was therefore not necessary for the tenant to break the lease early. The landlord advertised the rental unit for re-rent at a reduced amount of \$1995, but he was unable to re-rent the unit for February 2013. The landlord acknowledged that fans were in place in the rental unit until the first week of January 2013, and there was repair work being done in the unit in February 2013.

The landlord stated that the walnut desk in the rental unit had several scuff marks that were not removable. The landlord submitted photographs of the scuff-marked desk, as well as three quotes for a replacement desk. The quotes ranged from \$359.96 to \$678.13.

### *Tenant's Evidence*

The tenant stated that after the flood the rental unit became unliveable. There were four or five large fans blowing full-time, and the occupant could not sleep. The renovation contractors asked for full-time access to the rental unit, and they left tools and dust everywhere. The floorboards were loose and the furniture was moved. The landlord informed the tenant that the renovations would not be completed until after February 28, 2013, when the lease ended.

In regard to the landlord's claim for the desk, the tenant stated that the scratches on the desk were likely caused by the restoration contractors when they moved things around doing the renovations, and the tenant had no control over that.

### Analysis

Upon consideration of the evidence, I find as follows. The landlord is entitled to lost revenue for February 2013. The tenant did not take steps to mitigate their loss by seeking a reduction in rent during the renovations, and they did not provide sufficient evidence to establish that the unit was unlivable during that time. Instead, the tenant decided to break the lease and move out early.

The landlord is not entitled to the amount claimed for the damaged desk, as he did not provide sufficient evidence to establish that the damage was done by the tenant rather than by the renovation company.

As the landlord's claim was successful, he is entitled to recovery of the \$50 filing fee for the cost of his application. As the tenant's application was not successful, they are not entitled to recovery of their filing fee.

### Conclusion

The tenant's application is dismissed.

The landlord is entitled to \$2450. I order that the landlord retain the security deposit of \$1200 in partial compensation of this amount, and I grant the landlord an order under s. 67 for the balance of \$1250. This order may be enforced in Small Claims 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: May 13, 2013

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Residential Tenancy Branch