



# 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 was scheduled to deal with a landlord's application for a Monetary Order for damage to the unit; unpaid rent; damage or loss under the Act, regulations, or tenancy agreement; and, authority to retain the security deposit. Both parties appeared at the originally scheduled hearing.

Although the landlord served the tenant with the Application for Dispute Resolution via registered mail the landlord gave her evidence package to the tenant's mother. The tenant submitted that he had just received the evidence package in the few days prior to the hearing. The tenant also submitted that the Monetary Order had a nil balance. The tenant requested the hearing be adjourned so that he may review and respond to the landlord's submissions. I noted that the landlord had not served the Monetary Order worksheet to the Branch. The landlord indicated she wished to amend her application. I adjourned the hearing with instructions to the landlord to serve a Monetary Order worksheet, as amended, to the Branch and the tenant and I permitted the tenant the opportunity to submit a response.

At the reconvened hearing both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

As the tenant confirmed receipt of the landlord's amended claim and has had an opportunity to review and respond to it I have amended the Application for Dispute Resolution.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation in the amounts claimed against the tenant?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The parties entered into a fixed term tenancy set to commence July 8, 2012 and expire June 30, 2013. The tenant paid a security deposit of \$675.00 and was required to pay rent of \$1,395.00 on the 1<sup>st</sup> day of every month. The monthly rent included use of a separate space suitable for office space and/or storage. The tenant had a dog live with him in the unit although the pet damage deposit was waived by the landlord. The landlord did not prepare a move-in inspection report.

The tenant had gave at least three cheques to the landlord that were returned for insufficient funds. A 10 Day Notice to End Tenancy for Unpaid Rent issued in January 2013 was paid within five days by the tenant's uncle and the Notice was nullified. Due to the repeated returned cheques the landlord was unwilling to accept future rent payments from the tenant by way of a cheque and insisted upon cash.

For the month of February 2013 the tenant told the landlord he intended to give her a cheque written on his mother's account. The landlord informed the tenant she wanted cash. On February 2, 2013 no form of payment had been presented to the landlord and the landlord posted another 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit with an effective date of February 15, 2013. The tenant was angry that the landlord had served him with a 10 Day Notice and moved out of the rental unit February 7, 2013. The landlord started advertising the unit for rent on February 8, 2013 and re-rented the unit effective April 15, 2013.

Below, I have summarized the landlord's claim of \$3,601.00 against the tenant and the tenant's responses.

**Unpaid and/or loss of rent –**

The landlord is seeking to recover unpaid and/or loss of rent for the months of February and March 2013 in the amount of \$2,790.00 as the tenant breached the tenancy agreement.

The tenant submitted that the landlord did not have the right to refuse a cheque written on his mother's account. When asked why the tenant did not cash a cheque from his mother and give the cash to the landlord after receiving the 10 Day Notice the tenant acknowledged he was angry for receiving the 10 Day Notice and may have responded irrationally due to other health issues he was experiencing at the time.

The landlord responded by stating she would have accepted a cheque if it were certified.

#### **New locks –**

The landlord purchased a new lock at a cost of \$41.43 and spent an hour to install the new lock. The landlord is seeking \$41.43 plus \$25.00 from the tenant for the new locks. The landlord was of the position the tenant should pay for the new locks since he did not return the keys to the rental unit.

The tenant stated he left one set of keys in the unit and under the mat outside the door of the rental unit. The tenant acknowledged that he lost another set of keys provided to him. The tenant was of the position that changing locks is an ordinary cost of doing business that the landlord should absorb.

#### **Cleaning and garbage removal –**

The landlord submitted that she spent 10 – 12 hours cleaning the unit over a couple of weeks. The unit is approximately 1,100 square feet. The landlord's claim for cleaning is for \$494.38 which is based upon an emailed estimate she obtained from a cleaning company. The estimate from the cleaning company indicates the estimate was prepared "based on your information, a team of two would need about 3 – 3.5 hours." The estimate includes taxes.

In support of the landlord's position that the unit required considerable cleaning the landlord provided a video of the rental unit taken on February 17, 2013 and a move-out inspection report prepared without the tenant present. The landlord also pointed to an email the tenant wrote acknowledging cleaning was required.

The landlord submitted that she had to remove trash left behind by the tenant and is seeking \$100.00 for this portion of her claim. The landlord acknowledged that she did not actually incur dump fees but that she placed the trash in the regular trash and recycling pick up. Accordingly, the disposal cost her time rather than out of pocket

expenditures. The landlord pointed to an email the tenant wrote agreeing to pay \$100.00 for trash removal.

The tenant submitted that he had one of his employees clean the unit and submitted that the video must have been taken before his employee went to the unit. The tenant could not say exactly which day his employee attended the unit to clean it.

The tenant submitted that there was very little trash left in the unit and that under this tenancy agreement he was provided garbage disposal in his rent.

The tenant submitted he was unaware of the move-out inspection as the notice of the move-out inspection was posted on the door of the rental unit after he moved out. The landlord stated she posted the notice of the inspection on the door because she did not have a forwarding address for the tenant.

### **Repairs –**

The landlord is seeing \$50.00 for her time spent repairing holes in the wall where a TV was mounted and replacing the bi-fold closet door on the bi-fold tracks.

The tenant was largely agreeable with this part of the landlord's claim.

### **Light remote control –**

The remote control was missing at the end of the tenancy. The landlord submitted an advertisement for a similar remote costing nearly \$20.00 with tax.

The tenant acknowledged the remote was accidentally removed from the unit and he is willing to return it to the landlord.

The landlord stated she would like return of the remote more than the compensation and asked that the tenant return it to her.

### **Analysis**

Upon consideration of everything presented to me I provide the following findings and reasons.

### **Unpaid and/or Loss of Rent --**

A tenant is required to pay rent when due under their tenancy agreement. Where a landlord is provided several cheques that are returned for insufficient funds I find it reasonable that a landlord require cash or certified cheque. Continuing with the tenancy but requiring cash or certified cheque is beneficial to the tenant as the landlord could have ended the tenancy for cause on the basis of "repeated late payment of rent".

While I accept the tenant's testimony that the landlord told him only cash was acceptable, upon receiving the 10 Day Notice the tenant had a number of options available to him including: cashing a cheque from his mother and pay the landlord cash within five days of receiving the 10 Day Notice; enquire with the landlord whether she would accept a certified cheque or money order; or, file an Application for Dispute Resolution seeking to dispute the 10 Day Notice and seek resolution to their dispute over method of payment. I note that in an email sent to the tenant on February 5, 2013 the landlord indicated she would accept a money order. However, the tenant reacted out of anger and decided to vacate the rental unit, bringing the tenancy to an end. I find the tenant's decision to end the tenancy is not a basis to deny the landlord's claim for unpaid rent. Therefore, I find the landlord entitled to recover unpaid rent for the month of February 2013.

Where a tenant has a fixed term tenancy the tenant is obligated to fulfil the duration of the fixed term. If a tenant breaches the fixed term tenancy agreement and ends the tenancy early the tenant may be held responsible for loss of rent until the unit is re-rented, provided the landlord makes reasonable efforts to mitigate losses.

In this case, I find the tenant ended the tenancy early by not paying the rent within 5 days of receiving a 10 Day Notice and that the landlord made reasonable efforts to re-rent the unit. Therefore, I find the landlord entitled to recover loss of rent for the month of March 2013 as claimed.

### **New locks –**

The Act requires that a tenant return all keys to the landlord at the end of the tenancy. In this case, the tenant acknowledged he did not return all of the keys he was provided. Therefore, I find the tenant violated the Act in this regard and the landlord's claim for replacement locks is reasonable. Therefore, I grant the landlord's request for compensation as claimed.

### **Cleaning –**

Based upon all of the evidence before me, including the tenant's email where he offers to compensate the landlord \$200.00 for cleaning, I accept that some additional cleaning was required. However, I find the landlord's claim for almost \$500.00 is excessive based upon her own submissions. The landlord's estimate from a cleaning company indicates two cleaners at 3 – 3.5 hours each was appropriate which is the equivalent of 6 – 7 hours. In recognition that professional cleaners may be faster and/or more efficient than a non-professional cleaner I accept that the landlord may have spent 10 hours cleaning. I find a reasonable hourly rate for cleaning by a non-professional is \$20.00 per hour. Thus, I find the landlord has substantiated a cleaning claim of \$200.00. I note this is the same amount offered to the landlord by the tenant. Therefore, I award the landlord \$200.00 for cleaning.

With respect to garbage removal I find the garbage was not limited the trash left right inside the door. In the statement written by the persons who videotaped the property on February 17, 2013 and in the landlord's emails to the tenant there is reference to abandoned property in the office area including shelving and binders. Further, the tenant offers to compensate the landlord \$100.00 for garbage removal in his email to her. Therefore, I find the preponderance of evidence points to the landlord having to remove these items which I accept would be more than a minor inconvenience. As the landlord did not incur dump or removal fees I find it appropriate to award the landlord \$50.00 for her time spent removing the items and including them in the garbage and recycling receptacles at the property.

### **Repairs –**

As the landlord's claim for \$50.00 for repairs was undisputed I award this amount to the landlord.

### **Light remote control –**

I accept that the landlord is entitled to either the return of the remote or compensation for this missing remote. As the tenant was willing to return the remote and the landlord was willing to accept its return I provide the following order:

**I include compensation of \$20.00 in the landlord's Monetary Order for the missing remote; however, if the tenant returns the remote to the landlord in satisfactory condition and before a replacement remote is purchased, the landlord shall**

**accept the remote and issue a receipt to the tenant reflecting its return and credit of \$20.00 toward the Monetary Order.**

**Filing fee –**

As the landlord was largely successful in this application I award the filing fee to the landlord.

**Security deposit –**

Although the landlord extinguished the right to claim against the deposit for damage to the rental unit by failing to prepare a move-in condition inspection report, the landlord retained the right to claim against the deposit for losses other than damage. Therefore, I authorize the landlord to retain the security deposit in partial satisfaction of the rent owed to the landlord.

**Monetary Order –**

In light of all of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid Rent: February 213	\$ 1,395.00
Loss of Rent: March 2013	1,395.00
New locks (\$41.43 + \$25.00)	66.43
Cleaning and garbage removal (\$200.00 + \$50.00)	250.00
Repairs	50.00
Light remote (if not returned)	20.00
Filing fee	50.00
Less: security deposit	<u>(675.00)</u>
Moneta Order	\$ 2,551.43

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

**Conclusion**

The landlord has been authorized retain the tenant's security deposit and has been provide a Monetary Order for the balance of \$2,551.43 to serve and enforce as necessary.

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: July 16, 2013

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Residential Tenancy Branch