



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding University Investments Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MND, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's 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; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The Executor for the tenant and an agent for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The Executor confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep the security deposit?

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties attending agree that this tenancy started on March 01, 2011 for a fixed term which expired on February 29, 2012. The tenancy then reverted to a month to month tenancy. Rent for this unit was \$930.00 per month which increased in increments to \$1,005.00 on March 01, 2013. There was a further monthly fee of \$15.00 for parking. The tenant paid a security deposit of \$465.00 on February 22, 2011.

The landlord testifies that the tenants sister KS informed the landlord that the tenant was deceased. The tenants family provided documentation showing the death certificate and Will naming the tenants sister KS as executor of the Will. The landlord allowed the tenants family access to the unit on May 17, 2013. The Executor gave written notice to end the tenancy to the landlord on May 27, 2013. This was effective on May 31, 2013. The Executor later gave another notice to end the tenancy to the landlord on May 30, 2013 with an effective date of June 15, 2013. This second Notice also contained the Executors forwarding address.

The landlord testifies that he is unsure when the Executor vacated the unit but testifies that on June 14, 2013 the landlord found the unit empty of most personal belongings and the keys had been left on the kitchen counter. The tenant's family used the unit in June along with the tenants parking stall. As insufficient Notice was given by the Executor, the landlord was unable to re-rent the unit for June, 2013 and seeks to recover the rent for June of \$1,005.00 and the parking fee of \$15.00. The landlord testifies that as the rent for June was not paid on time and the Executor had access to the unit for June the landlord also seeks to recover the late fee of \$25.00 as indicated under clause eight of the tenancy agreement.

The landlord testifies that a final Notice of inspection was sent to the tenant' and Executor's father who is a lawyer. The Executor asked the landlord to send all documentation concerning the tenancy to their father. The landlord scheduled the inspection for June 24, 2013 at 11.00 a.m. A copy of this notice was also posted to the door of the rental unit on June 04, 2013. The Executor did not attend the final inspection and this was completed in their absence.

The landlord testifies that it was found during the inspection that the rental unit was not left in a reasonable clean condition. The carpets were unclean in the living room and entry way and the rest of the unit was left dirty. There was also a large piece of furniture which had been abandoned by the family which had to be broken up and disposed of. There were other smaller items left in the unit such as a small table and other odds and ends. The landlord seeks the following costs to remedy these issues.

Carpet cleaning	\$63.00
General cleaning	\$183.75
Disposal of furniture and other items	\$126.00

The landlord seeks to recover a further amount of \$10.91 for postage costs. The landlord has provided receipts for carpet cleaning, disposal of furniture, and cleaning, in documentary evidence. The landlord has also provided copies of the Executor's notices and the final opportunity for inspection forms. The landlord seeks an Order to keep the security deposit to offset against these costs.

The Executor for the tenant disputes the landlords claim. The Executor testifies that they were only in the unit until June 05, 2013 at which time nearly everything was removed and the unit was cleaned. The Executor testifies that they gave the landlord Notice to end the tenancy on June 15, 2013 as the landlord had the security deposit to cover the rent for that period. The Executor disputes that they used the parking until June 15, 2013 and suggest that it may have been used by someone else.

The Executor testifies that the carpets were not left dirty and had been vacuumed. The unit had been cleaned and there was not garbage left in the unit. The large piece of furniture that was left had been purchased by the tenant from the previous tenant and so they left that for the next tenants use as it was too large to move. There was also a small table left in the unit for the new tenants along with the shower curtain. There was an oil heater left behind which the Executor believes belonged to the landlord. The only area that may not have been cleaned was the fridge but all food items had been removed.

The Executor testifies that the keys had been left on June 05, 2013 by another family member and that family member sent the Executor text pictures showing how clean the unit was on that date.

The Executor denies receiving a final Notice for inspection but agrees that she did provide the landlord with her father's name and address to send correspondence to.

The landlord disputes the Executors testimony and testifies that the landlord could not show the unit as it did not show well due to the unit being unclean. The unit was advertised around late May early June. The landlord testifies that the landlord was also doing some other repairs and upgrades to the unit such as repairs to a pipe but the unit was shown while they were working in the unit. The unit was re-rented on August 15, 2013.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for unpaid rent for June, 2013; having reviewed the evidence before me I find the tenant's executor did provide written Notice to the landlord on May 30, 2013 that the unit would be available from June 15, 2013.

A landlord is required to do what they can to mitigate any loss and must take steps to try to re-rent the unit as quickly as possible. The landlord has claimed that the unit did not show well in order to re-rent it and that they advertised it for rent. The landlord has provided no evidence to show that the unit was advertised at the end of May or beginning of June. The landlord has also testified that they did some repairs and upgrades to the unit. The invoices for work carried out in the unit show that the carpets were not cleaned until July 10, 2013; the items were removed on June 18, 2013 and the unit was not cleaned until August 07, 2013. Consequently, I am not satisfied that the landlord did mitigate the loss of rent by preparing the unit for rent as quickly as possible. The landlords claim for unpaid rent for June is therefore limited to rent from June 01, to June 15, 2013 to an amount of **\$502.50**.

With regard to the landlords claim for a late fee of \$25.00; s. 7(d) of the *Residential Tenancy Regulation* allows a landlord to charge a fee of no more than \$25.00 for late fees which are documented in a tenancy agreement. Section eight of the written tenancy agreement provided by the landlord as evidence, indicates that this fee can be charged and as a result I find that the landlord is entitled to this fee of **\$25.00** as the rent was not paid for June and the Executor still had indicated occupancy of the unit until June 15, 2013.

With regards to the landlords claim for cleaning and removal of furniture; the landlord has provided a copy of the move in and move out inspection reports in evidence. The landlord has also provided a copy of the final Notice for inspection which was both posted on the door and sent to the executor father as requested by the executor. The executor argues that the unit was clean but has provided no evidence to support this. The move out inspection report details that many areas of the unit were dirty and the carpets had not been cleaned. The executor agrees that some items of furniture were left in the unit. A tenant or a person acting on behalf of the tenant or the tenant's estate cannot assume that the landlord or the next tenant would want this furniture. While I appreciate that the larger item was difficult to remove the fact remains that it was the

responsibility of the tenant's Executor to have all of the tenant's possessions removed from the rental unit.

Consequently I must find in favour of the landlords claim for carpet cleaning, general cleaning and removal of furniture and other small items. The landlord is entitled to a monetary award of **\$372.75**.

With regard to the landlord's claim to recover costs for postage; there is no provision under the Act for costs of this nature to be awarded to a party. This section of the landlords claim is therefore dismissed.

I Order the landlord to keep the security deposit of **\$465.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the landlord's monetary claim. I further find the landlord is entitled to recover the **\$50.00** filing fee pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Loss of rent	\$502.50
Late fee	\$25.00
Cleaning and furniture removal	372.75
<b>Subtotal</b>	<b>\$900.25</b>
Plus filing fee	\$50.00
Less security deposit	(-\$465.00)
<b>Total amount due to the landlord</b>	<b>\$485.25</b>

### 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 **\$485.25**. 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: October 03, 2013

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Residential Tenancy Branch

