



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, for authority to keep all or part of the security deposit and pet damage deposit, and to recover the filing fee.

The landlord and tenant appeared at the teleconference hearing and provided affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the testimony and documentary evidence is provided below and includes only that which is relevant to the matters before me.

On September 20, 2013, the hearing was adjourned to allow the tenant to serve rebuttal evidence by registered mail to the landlord and to the Residential Tenancy Branch which the tenant did. The landlord was also verbally ordered to re-serve her application by registered mail onto the tenant. When the hearing reconvened on November 5, 2013, I found that the tenant was sufficiently served in accordance with the *Act*, and that both parties had received the evidence from the other party and that both parties had the opportunity to review that evidence.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant’s security deposit and pet damage deposit under the *Act*?

### Background and Evidence

The written tenancy agreement submitted in evidence indicates that a fixed term tenancy began on January 1, 2012 and reverted to a month to month tenancy after December 31, 2012. The parties disputed the date when the tenant vacated the rental unit. The tenant stated that she vacated the rental unit on May 31, 2013, whereas the landlord stated that she received notice on June 4, 2013 from a different tenant living in a different rental unit downstairs that the tenant vacated the rental unit on June 4, 2013.

Monthly rent at the start of the tenancy was \$2,200.00 and was due on the first day of each month. In February 2012, the tenant rented an additional portion of the home resulting in the parties entering into a new tenancy agreement. The final amount of monthly rent at the end of the tenancy was \$2,698.80 per month which the parties confirmed during the hearing. A security deposit of \$1,300.00 and a pet damage deposit of \$550.00 were paid by the tenant at the start of the tenancy, which the landlord continues to hold.

The landlord's monetary claim is in the amount of \$6,798.80 which is comprised of the following:

Item #1. Rent for June 2013	\$2,698.80
Item #2. Utilities	\$700.00
Item #3. Repaint House	\$2,300.00
Item #4. Clean	\$200.00
Item #5. Maintenance	\$200.00
Item #6. Railing	\$700.00
<b>TOTAL</b>	<b>\$6,798.80</b>

### Settlement Agreement

During the hearing, the parties mutually agreed to settle item #2 above regarding utilities. Regarding unpaid utilities, the parties agreed that the tenant will pay the landlord \$238.38 for unpaid gas utilities, and \$272.40 for unpaid hydro utilities for a total of \$510.78.

Remainder of Items

Item #1 - The landlord has claimed \$2,698.80 for unpaid rent/loss of rent for the month of June 2013 due to the tenant providing a late Notice to End a Tenancy under the Act. The tenant referred to page 33 in her evidence, which is a copy of a letter dated April 23, 2013 which the tenant stated she mailed to the landlord via regular mail, not registered mail. The landlord testified that she did not receive a letter from the tenant but did receive an e-mail dated April 30, 2013, on May 1, 2013 via her work e-mail account. A copy of the April 30, 2013 e-mail from the tenant was referred to by the tenant on page 34 of the tenant's evidence. In the April 30, 2013 e-mail, the tenant provided her forwarding address to the landlord and indicated that she would be vacating effective May 31, 2013 at 1:00 p.m. The e-mail is addressed to both the landlord's personal e-mail account, and the landlord's work e-mail account. The landlord stated that the tenant was notified several times during the tenancy that she could not e-mail the landlord at her personal e-mail account and the landlord stated that she had blocked the tenant from her personal e-mail account, which is why she did not receive the tenant's e-mail until May 1, 2013 when she checked her work e-mail account.

The e-mail dated April 30, 2013, reads in part, "Please accept this as my Notice to End Tenancy effective May 31, 2013 at 1:00 p.m." but does not specifically make reference to an earlier letter dated April 23, 2013.

The tenant stated that she vacated the rental unit on May 31, 2013. The landlord disputed the tenant's testimony and stated that the downstairs tenants advised her on June 4, 2013 that the tenant vacated the rental unit on June 4, 2013.

Item # 3 – The landlord has claimed \$2,300.00 for costs related to repainting the rental unit. The landlord confirmed that she did not provide any receipts in the amount of \$2,300.00 in evidence and then requested to reduce her claim to \$909.25 as she did submit a "quotation" dated 12/14/2011 in the amount of \$909.25. The landlord did not refer during the hearing to documentary evidence that the rental unit required repainting, nor did the condition inspection report submitted in evidence indicate that repainting of the rental unit was necessary. The tenant did not agree that the rental unit required repainting during the hearing.

Item #4 – The landlord has claimed \$200.00 to "clean" the rental unit after the tenant vacated. The landlord testified that she did not submit an invoice or receipt for cleaning costs. The tenant testified that the rental unit was left "clean" at the end of the tenancy.

Item #5 – The landlord has claimed \$200.00 for “maintenance”. The landlord submitted a receipt in the amount of \$282.24 dated June 15, 2013 from a lock company which includes a service call, re-keying, keys and strike plates plus taxes for a total of \$282.24. The landlord submitted in evidence a Notice of Final Opportunity to Schedule a Condition Inspection scheduling the outgoing condition inspection on June 10, 2013 at 7:00 p.m. The landlord also submitted in evidence an e-mail from the tenant which reads in part:

“...I received a Notice of Final Opportunity to Schedule a Condition Inspection on June 8, 2013 delivered to my new address, requesting that we meet to do an inspection today June 10, 2013 at 7:00 p.m. I am sorry I will not be there as my son has baseball at 6:30 p.m...”

[reproduced as written]

The tenant stated that the rental unit keys were sent to an Alberta address and the tenant stated that she mailed the rental unit keys to the service address listed on the tenancy agreement. The tenancy agreement submitted in evidence does list an Alberta address for the landlord.

The landlord is seeking \$282.24 as the receipt is dated June 15, 2013 and her application was filed estimating \$200.00 the day earlier on June 14, 2013.

Item # 6 – The landlord has claimed \$700.00 for damage to a railing. The tenant denied damaging the railing and noted in the condition inspection report that at the incoming condition inspection, a banister is listed as having “scratches”, which the landlord did not deny during the hearing. The tenant stated that any damage to the railing or banister was there at the start of the tenancy and that she did not cause any damage to the railing or banister. The landlord submitted a typed estimate from a person, TM, where TM writes that the material/supplies for the railing repair will be \$247.00 and the labour would be \$1,440.00 plus GST of \$72.00.

### Analysis

Based on the documentary evidence, the testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

**Item #1** - The landlord has claimed \$2,698.80 for unpaid rent/loss of rent for the month of June 2013 due to the tenant providing late notice under the *Act*.

The tenant claims mailed a letter to the landlord via regular mail on April 23, 2013 and confirmed that she did not use registered mail. The landlord testified that she did not receive a letter from the tenant but did receive an e-mail dated April 30, 2013, on May 1, 2013 via her work e-mail account. The e-mail dated April 30, 2013, reads in part, "Please accept this as my Notice to End Tenancy effective May 31, 2013 at 1:00 p.m." but does not specifically make reference to an earlier letter dated April 23, 2013.

**I find** that the tenant has provided insufficient evidence that she mailed a letter on April 23, 2013. The tenant had the opportunity to use registered mail and chose not to use registered mail when sending her Notice to End Tenancy even though there was acrimony between the parties during the tenancy. Furthermore, there is no service provision under the *Act* to send a Notice to End Tenancy via e-mail, and as a result, **I accept** that the earliest date to which the landlord had received the tenant's Notice to End Tenancy was on May 1, 2013. Section 45 of the *Act* states:

Section 45 of the *Act* states:

- 45** (1) A tenant may end a **periodic tenancy** by giving the landlord notice to end the tenancy effective on a date that

(a) **is not earlier than one month after the date the landlord receives the notice, and**

(b) **is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Based on the above, **I find** the tenant breached section 45 of the *Act* by failing to give the landlord proper notice before May 1, 2013 and as a result, the earliest the tenant's Notice to End Tenancy could be effective under the *Act* would be for June 30, 2013. Therefore, **I find** the landlord has met the burden of proof and is entitled to compensation for loss of rent for the month of June 2013 in the amount of **\$2,698.80**.

**Item # 3** – The landlord has claimed \$2,300.00 for costs related to repainting the rental unit. The landlord confirmed that she did not provide any receipts in the amount of \$2,300.00 and then requested to reduce her claim to \$909.25 as she did submit a “quotation” dated 12/14/2011 in the amount of \$909.25. The tenant disputed that the rental unit required repainting. I find that a quote dated 12/14/2011 which is dated before the tenancy began on January 1, 2012, is not sufficient evidence to support this portion of the landlord's claim. Based on the above, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

**Item #4** – The landlord has claimed \$200.00 to “clean” the rental unit after the tenant vacated. The landlord testified that she did not submit an invoice or receipt for cleaning costs. The tenant disputed that the rental unit was not left clean at the end of the tenancy. **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

**Item #5** – The landlord has claimed \$200.00 for “maintenance”. The landlord submitted a receipt in the amount of \$282.24 dated June 15, 2013 from a lock company which includes a service call, re-keying, keys and strike plates plus taxes for a total of \$282.24. Section 37 of the *Act* states:

### **Leaving the rental unit at the end of a tenancy**

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) **give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.**

The tenant states that she vacated the rental unit on May 31, 2013. The landlord stated that the tenant vacated the rental unit on June 4, 2013. **I find** the tenant provided insufficient evidence that she returned the rental unit keys by 1:00 p.m. on May 31, 2013 or that she mailed the rental unit keys to the landlord by that date. The tenant made the decision not to attend for the final condition inspection or send an agent to attend on her behalf on June 10, 2013 and decided instead to mail the rental unit keys to Alberta resulting in the landlord incurring an expense of \$282.24.

Based on the above, **I find** the landlord has met the burden of proof and that the landlord is entitled to compensation in the amount of **\$282.24** due to the tenant failing to return the rental unit keys in accordance with section 37 of the *Act*. I find that this amount is reasonable and is close to the original amount being claimed by the landlord under section 67 of the *Act*.

**Item # 6** – The landlord has claimed \$700.00 for damage to a railing. The tenant denied damaging the railing and noted in the condition inspection report that at the incoming condition inspection, a banister is listed as having “scratches”, which the landlord did not deny during the hearing. Based on the above, **I dismiss** this portion of the landlord’s claim due to insufficient evidence, without leave to reapply.

The landlord has established a monetary claim as follows:

Item #1. Rent for June 2013	\$2,698.80
Item #2. Utilities <b>via mutual agreement</b>	\$510.78
Item #5. Maintenance (Locks)	\$282.24
<b>TOTAL</b>	<b>\$3,491.82</b>

As the landlord was successful with the majority of her claim, **I grant** the landlord the recovery of the filing fee in the amount of **\$100.00**. The landlord continues to hold the tenant’s security deposit of \$1,300.00 and pet damage deposit of \$550.00 which has accrued \$0.00 in interest to date, for a total in deposits of \$1,850.00.

**Monetary Order – I find** that the landlord has established a total monetary claim in the amount of **\$3,591.82** comprised of \$3,491.82 for items 1, 2, and 5, plus the \$100.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit and pet damage deposits which together total \$1,850.00. **I authorize** the landlord to retain the tenant's full security deposit and pet damage deposit of \$1,850.00 in partial satisfaction of the landlord's claim. **I grant** the landlord a monetary order under section 67 for the amount owing by the tenant to the landlord in the amount of **\$1,741.82** which must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The landlord has established a total monetary claim in the amount of \$3,591.82. The landlord has been authorized to retain the tenant's full security deposit and pet damage deposit which combined total \$1,850.00 in partial satisfaction of the landlord's claim.

The landlord has been granted a monetary order in the amount of \$1,741.82 which must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 29, 2013

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Residential Tenancy Branch



