



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit – Section 67;
2. A Monetary Order for compensation - Section 67;
3. A Monetary Order for unpaid rent or utilities - Section 67;
4. An Order to retain the security deposit – Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amount claimed?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on November 15, 2013. The Tenant states that she did not sign the tenancy agreement but that she told her roommate to sign it for both of them. It is noted that the tenancy agreement is signed by the roommate. The Landlord states that he cannot recall whether his business partner conducted a move-in inspection and report. The Tenant states that she did not go on an inspection with the Landlord at move-in.

The Tenant moved out of the unit on July 31, 2013 without notice to the Landlord. The Tenant states that the keys to the unit were returned to the Landlord at his business at the beginning of August 2013. The Landlord states that he became aware that the Tenant had vacated the unit on August 5 or 6, 2013.

Rent of **\$1025.00** was payable monthly and the Landlord states that the rent cheque for July 2013 was returned NSF and claims the rental amount plus \$20.00 for a NSF charge. The Tenant does not dispute that she owes the rent for July 2013 for July 2013.

The Landlord states that the unit was left reasonably clean and was advertised online sometime after August 15, 2013 with an immediate availability and with an increased rental amount. The Landlord states that the unit was re-rented for September 1, 2013 with the monthly rental of \$1,100.00. The Tenant states that she moved out of the unit because she could not pay the rent for August and still cannot pay this rent as she has no money.

The Landlord states that the Tenant owes \$262.49 in unpaid hydro for the period March 22 to May 22, 2013 and claims this amount. The Landlord provided a copy of the invoice. The Tenant states that the Tenants agreed to split the hydro costs with the lower rental unit and that they did pay 50% during the tenancy but that it was an unfair agreement as the lower unit had more people in it. The Landlord states that the Tenant knew at the time of renting the unit that the lower unit had tenants with children.

The Landlord states that the Tenant damaged the garage door by driving a car into it and that it required replacement. The Landlord provided a photo of the damaged door and states that it was replaced on August 30, 2013. The Landlord states that although he has insurance with a \$500.00 deductible he did not want to make a claim as it was the Tenant's fault the door was damaged. The Tenant does not dispute damaging the door but states that at move-in the unit was damaged, dirty and moldy and that the

Landlord's business partner and agent for the tenancy told the Tenants that the building was due to be demolished in 2013 and that any damages that the Tenant might make did not matter. The Landlord states that the building is not being torn down for some time. The Landlord claims \$834.75 for the costs to replace the door.

### Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Given the Tenant's agreement I find that the Landlord had substantiated unpaid rent of **\$1,025.00** for July 2013. Given the Tenant's evidence that the keys were returned sometime at the beginning of August 2013, I accept the Landlord's evidence that he did not have any notice of the end of the tenancy until August 6, 2013. Given the Landlord's undisputed evidence that the unit was advertised shortly thereafter and rented for September 1, 2013, I find that the Landlord acted reasonably to mitigate the losses suffered from a lack of notice by the Tenant. I find therefore that the Landlord has substantiated an entitlement to **\$1,025.00** for August 2013 rent.

Section 7 of the Residential Tenancy Regulations provides that a landlord may charge a late rent or NSF fee of no more than \$25.00 where such provision is contained in the tenancy agreement. As there is no provision in the tenancy agreement for such a fee, I dismiss the Landlord's claim for the NSF fee.

The tenancy agreement provides that hydro is not included in the rent. Given the Tenant's evidence of agreement and payment of 50% of the hydro and accepting that the Tenant knew at the time of the agreement that other unit would be sharing the hydro, I do not find any gross unfairness with the agreement. As such, I find that the Landlord has substantiated an entitlement to **\$262.49** for the costs of hydro.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit undamaged except for reasonable wear and tear. Although the Tenant agrees to having caused the damage to the door, given the lack of a move-in condition report and considering the Tenant's evidence of the state of the unit at move-in, I find that the Tenant's evidence of the Landlord's intention to demolish the unit to hold a ring of truth. Given that the Landlord provided no evidence of any reasonable steps taken to minimize or mitigate the costs claimed, I dismiss the Landlord's claim for the replacement of the garage door.

As the Landlord has been partially successful with its application, I find that the Landlord is entitled to the recovery of the **\$50.00** filing fee for a total entitlement of **\$2,362.49**. Deducting the security deposit of **\$512.50** plus zero interest off the entitlement leaves **\$1,849.99** owed by the Tenant to the Landlord.

### Conclusion

I Order the Landlord to retain the security deposit plus interest of \$512.50 from the security deposit plus interest in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$1,849.99**. If necessary, this order may be filed in the Small Claims Court and 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: December 19, 2013

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Residential Tenancy Branch

