



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:45 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's representative (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. She testified that one of the landlord's representatives sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on August 27, 2013. She provided the Canada Post Tracking Number to confirm this mailing. Based on the landlord's sworn testimony and in accordance with sections 89(1) and 90 of the *Act*, I find that the tenant was deemed served with the landlord's dispute resolution hearing package on September 3, 2013, five business days after its mailing.

At the hearing, the landlord testified that a complete written evidence package was included with the registered mail sent to the tenant on August 27, 2013. However, as the landlord referred to her written evidence it became apparent that the Residential Tenancy Branch (the RTB) had only received a portion of the landlord's written evidence submitted to the tenant. The landlord testified that she understood that this evidence was provided to the RTB when the application was submitted. Under these circumstances and as this evidence had already been provided to the tenant, I asked the landlord to fax the written evidence that she maintained had already been submitted to the RTB by 4:00 p.m. on the day of the hearing. The RTB received this material by

fax within an hour of the end of this hearing and I have considered this evidence in addition to the landlord's earlier written evidence and sworn oral testimony.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, losses and damages arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord entered sworn testimony and written evidence that the tenant signed a Residential Tenancy Agreement (the Agreement) on June 22, 2012, to take occupancy of the rental unit on June 24, 2012. The Agreement was for a one-year fixed term to end by May 31, 2013. Monthly rent was set at \$1,100.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$550.00 security deposit paid on June 22, 2012.

The landlord testified that the tenant changed his mind about moving into the rental unit after signing the Agreement and paying his \$550.00 security deposit and \$260.00 for the pro-rated portion of rent for June 2012.

The landlord said that the tenant met with her a few days later to advise that he would not be taking occupancy of the rental unit and wished to end his tenancy. The landlord said that she would attempt to re-rent the premises, but that he would be responsible for rental losses that the landlord would be likely to incur as well as a \$300.00 liquidated damages charge that he had agreed to when he signed the Agreement. The landlord entered into written evidence a copy of a signed agreement between the parties of July 4, 2012, in which the Agreement of June 22, 2012 was cancelled and in which the tenant gave his notice to vacate the rental unit by July 31, 2012. In this agreement to end his tenancy, the tenant signed a statement giving the landlord permission to deduct \$300.00 in liquidated damages from his security deposit, as per the terms of his initial Agreement. This signed statement also acknowledged that he agreed to be held responsible for unpaid rent of \$1,100.00 for July 2012, if the landlord were unsuccessful in finding another tenant for these premises during July 2012.

The landlord provided sworn testimony and written evidence that the landlord was able to locate a new tenant for this rental unit as of August 1, 2012, for a monthly rent of \$1,095.00 on a one-year fixed term. Although the parties entered into an agreement whereby the tenant would make monthly payments of \$150.00 to the landlord to resolve

the monies owed, the landlord supplied sworn testimony supported by written evidence that the tenant made only one of these \$150.00 payments.

The landlord applied for a monetary award of \$766.69, calculated as follows:

<b>Item</b>	<b>Amount</b>
Unpaid July 2012 Rent	\$1,100.00
Liquidated Damages	300.00
Rent Owed for June 212	256.69
Less Rent Paid for June 2012	-260.00
Less Tenant's Payment to Landlord since July 4, 2012	-150.00
Less Security Deposit	-550.00
<b>Total of Above Items</b>	<b>\$696.69</b>

### Analysis

I have reviewed the terms of the Agreement and the statement contained in the July 4, 2012 agreement between the parties. Section 3(b) of the Agreement established that the tenant agreed to pay the landlord \$300.00 in liquidated damages if he were to end this tenancy before the scheduled end date to this fixed term tenancy. The tenant gave even more express authorization to the landlord to retain this amount from the tenant's security deposit in the statement he signed on July 4, 2012, ending his tenancy. Under these circumstances and as the tenant has given his express signed authorization to allow the tenant to retain \$300.00 from his security deposit as liquidated damages, I allow the landlord's application to retain \$300.00 from the tenant's security deposit.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for loss that results from that failure to comply. I find undisputed evidence that the tenant was in breach of his fixed term Agreement because he vacated the rental premises prior to the May 31, 2013 date specified in that Agreement. As such, the landlord is entitled to compensation for losses incurred as a result of the tenant's failure to comply with the terms of his Agreement and the *Act*.

There is undisputed evidence that the tenant did not pay his rent for July 2012, the last month of his fixed term tenancy. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Based on the undisputed evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for July 2012, and was successful in

finding a new tenant who took occupancy on August 1, 2012. As such, I am satisfied that the landlord has discharged the duty under section 7(2) of the *Act* to minimize the loss of rent. I allow the landlord to recover \$1,100.00 in unpaid rent from July 2012, less the \$3.33 amount overpaid by the tenant for June 2012 (i.e.,  $\$260.00 - [\$1,100 \times 7/30 = \$256.67] = \$3.33$ ) and the \$150.00 paid by the tenant to the landlord.

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

### Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, damages and the filing fee, less the amount of payments made to the landlord and the retained value of the tenant's security deposit:

Item	Amount
Unpaid July 2012 Rent	\$1,100.00
Liquidated Damages	300.00
Rent Owed for June 212	256.67
Less Rent Paid for June 2012	-260.00
Less Tenant's Payment to Landlord since July 4, 2012	-150.00
Less Security Deposit	-550.00
Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$746.67</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 06, 2013

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Residential Tenancy Branch

