



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Capreit  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, 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 unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. 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 amounts claimed?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy agreement was signed July 12, 2013 for a tenancy start date of August 1, 2013 on a fixed term to July 31, 2014. Rent of \$1,900.00 was payable monthly and at the outset of the tenancy the Landlord collected \$950.00 as a security deposit. The first month rent was provided free as an incentive for the tenancy.

The Landlord states that they took over the building containing the unit on September 1, 2013 and that on September 16, 2013 a 10 day notice to end tenancy was posted on

the Tenant's door. The Landlord states that up to this time they had not heard anything from the Tenant. The Landlord states that on September 24, 2013 after receiving a dispute package from the Tenant, the Landlord became aware that the tenancy had ended. The Landlord states that at this time the unit was in an unfinished state of repairs. The Landlord states that although a previous manager spoke with the Tenant at this point the Landlord was not sure about any previous promises made to the Tenant about repairs and was not sure if the manager made any offers to complete the repairs in the future. The Landlord states that a move-in condition report was prepared by the Landlord and signed by the Tenant but that no deficiencies with the unit were noted. A copy of this report was not provided as evidence. The Landlord states that the unit was advertised for rent on November 7, 2013. The Landlord reduces the claimed amount to unpaid rent for September and October and for unpaid parking for September 2013.

The Tenant states that no inspection report was signed by the Tenant at move-in. The Tenant states that at signing the tenancy agreement several repairs were required to make the unit habitable such as hanging doors and cupboards and broken drain in the bathroom. The Tenant states that given the extent of the repairs that were required and started the Tenant did not move into the unit.

The Tenant states that the Landlord's employees disappeared at the end of August 2013 and that the repairs stopped and were still incomplete in September 2013. The Tenant states that repeated attempts were made to contact the Landlord however there was no response. The Tenant states that after seeing the notice to end tenancy posted on the door, the Tenant left the key in the unit and filed an application for dispute resolution seeking repairs to the unit but as the tenancy had ended the application was dismissed.

### 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.

Based on undisputed evidence that the unit was still in an unfinished state of repairs at the end of September 2013, the Tenant's persuasive evidence that the Landlord did not respond to the Tenant's calls and or communicate with the Tenant about the expected completion of the repairs prior to the Landlord's act to end the tenancy during September 2013 and the Landlord's evidence that the unit was not advertised until November 7, 2013, I find on a balance of probabilities that the Landlord has failed to act reasonably in the circumstances to mitigate the losses claimed and I therefore dismiss the Landlord's application. As the Landlord still holds the security deposit of \$950.00 plus zero interest, I order the Landlord to return this amount to the Tenant forthwith.

#### Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$950.00**. 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: January 20, 2014

---

Residential Tenancy Branch

