



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Shawnessy Square Apartments  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNSD, MNDC

### Introduction

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

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- 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.

The tenant did not attend this hearing, although I waited until 11:11 a.m. in order to enable her to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he sent the tenant a copy of the dispute resolution hearing package by registered mail on December 14, 2013. He provided the Canada Post Tracking Number and a Canada Post Online Tracking Document to confirm that this document was sent on December 14, 2013 and successfully delivered on December 17, 2013. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the hearing package on December 19, 2013, the fifth day after its registered mailing.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses and damage 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?

### Background and Evidence

This periodic tenancy began on October 31, 2012. According to the terms of the Residential Tenancy Agreement entered into written evidence by the landlord, monthly rent was set at \$735.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$367.50 security deposit paid on September 21, 2012.

The landlord testified that he has returned \$100.00 in deposits for keys and a garage door opener.

The landlord entered into written evidence copies of the October 31, 2012 joint move-in condition inspection report and the November 30, 2013, joint move-out condition inspection report. The tenancy ended when the tenant vacated the rental unit as per a November 5, 2013 notice to end this tenancy the tenant left in the landlord's mail slot.

The landlord's application for a monetary award of \$1,014.22 included the following items listed in the landlord's written evidence, a copy of which the landlord provided to the tenant:

Item	Amount
Damage to the Rental Unit	\$244.44
Loss of Rent December 2013	735.00
Additional Advertising Costs	34.78
<b>Total of Above Items</b>	<b>\$1,014.22</b>

The landlord also entered into evidence photographs of the condition of the rental unit at the end of this tenancy, receipts outlining the costs of various items included in the monetary claim and a detailed breakdown of the landlord's claim for \$244.44 in damage to the rental unit.

### Analysis

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 damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for December 2013, the tenant would have needed to provide her notice to end this tenancy before November 1, 2013. As this did not occur, I find that the tenant is responsible for losses in rent that the landlord incurred for December 2013.

There is undisputed evidence that the tenant did not pay any rent for December 2013. 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 evidence presented, which included considerable documentation regarding the advertisements placed by the landlord to locate another tenant, I accept

that the landlord did attempt to the extent that was reasonable to re-rent the premises for December 2013. The written evidence supported his sworn testimony that he commenced trying to re-rent the premises on November 6, 2013, the day after the tenant gave her notice to end this tenancy. On December 10, 2013, the landlord was successful in re-renting the premises as of January 1, 2014. As such, I am satisfied that the landlord has discharged the duty under section 7(2) of the *Act* to minimize the tenant's exposure to the landlord's loss of rent for December 2013. I allow the landlord a monetary award of \$730.00 for loss of rent for December 2013.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The damage claimed by the landlord is in line with the damage that was revealed in the joint move-out condition report that was not present in the joint move-in condition inspection report. I find that damage did arise during this tenancy and the landlord has provided undisputed evidence regarding the extent of that damage and the measures that were undertaken to repair damage to the blinds, the stove, and to walls that needed to be repaired at the end of this tenancy. I am satisfied that the repair costs were reasonable given the nature of the damage. I issue the landlord a monetary award in the amount of \$244.44 for damage arising out of this tenancy.

I also find that the landlord has submitted sufficient undisputed evidence to document his claim that the landlord did incur an additional \$34.78 in advertising costs. This cost was incurred by having reference to the availability of this rental unit attached to another advertisement placed for a two bedroom corner suite already being advertised.

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover loss of rent and advertising costs, for damage to the rental unit and to recover the filing fee, and to retain the tenant's security deposit:

<b>Item</b>	<b>Amount</b>
Damage to the Rental Unit	\$244.44
Loss of Rent December 2013	735.00
Additional Advertising Costs	34.78
Less Security Deposit	-367.50
<b>Total Monetary Order</b>	<b>\$646.72</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: April 03, 2014

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Residential Tenancy Branch

