



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            MNR, MND, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on February 11, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?

### Background and Evidence

The landlord testified that this tenancy started on September 01, 2012 for a fixed term of one year. At the end of that term the tenancy reverted to a month to month tenancy. The landlord testified that rent for this unit was \$1,150.00 per month and was due on the 1<sup>st</sup> of each month in advance. The tenant paid a security deposit of \$575.00 on August 14, 2012. The tenancy ended on January 31, 2014.

The landlord testified that the parties attended the condition inspections of the unit at the start and the end of the tenancy and the tenant provided the landlord with a forwarding address in writing on January 31, 2014. The landlord testified that the tenant also signed to agree that deductions could be made from the security deposit for carpet cleaning of \$110.00; for cleaning and materials of \$36.00; for painting of \$245.00; and for the removal of patio furniture of \$147.00. The landlord has provided a signed security deduction sheet detailing the amounts the tenant has agreed the landlord may deduct from the security deposit in documentary evidence.

The landlord testified that the tenant only gave the landlord verbal notice to end the tenancy. The landlord requested that the tenant put her notice in writing; however, the tenant failed to do so. The landlord testified that the unit was advertised on all the internet sites used by the landlord but it was not re-rented until March 01, 2014. The landlord seeks to recover a loss of rent for February, 2014 of \$1,150.00.

The landlord has provided a copy of the inspection reports in documentary evidence with the security deposit deduction sheet signed by the parties. The landlord has also provided the invoices for carpet cleaning and painting. The landlord seeks an Order to keep all the security deposit of \$575.00 in partial satisfaction of their claim. The landlord also seeks to recover the filing fee of \$50.00.

### Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's documentary evidence and sworn testimony before me.

With regard to the landlord's claim for a loss of rent for February, 2014 of \$1,150.00; I refer the parties to s. 45 (1) of the Act which states:

*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.*

I am satisfied from the evidence before me that the tenant did not provide proper Notice as required under s. 45(1) of the *Act*. I am also satisfied that the landlord attempted to mitigate the loss of rent for the following month by advertising the unit. As the unit could not be re-rented for February 01, 2014 the tenant is held responsible for that rent as improper notice was given in writing. The landlord is therefore entitled to recover the sum of **\$1,150.00** for lost rent pursuant to s. 67 of the *Act*.

With regard to the landlord's claim for damage to the unit; at the end of a tenancy, if the tenant agrees in writing the landlord may retain an amount to pay a liability or obligation of the tenant to cover any damages or cleaning to the rental unit, the landlord is not required to apply to keep that part of the security deposit and the landlord may apply the amounts agreed of the security deposit to the damages or cleaning costs pursuant to s. 38(4)(a) of the *Act*. Consequently, I find the tenant has signed the security deduction sheet detailing the costs of **\$110.00** for carpet cleaning, **\$36.00** for cleaning and supplies, **\$245.00** for painting and **\$147.00** for the removal of the tenant's patio furniture. I am not therefore required to make an Order in this matter and my calculations below reflect that these amounts have been taken from the security deposit as agreed.

As the landlord has been successful in this matter the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Loss of rent for February, 2014	\$1,150.00
Damages and cleaning	\$538.00
Filing fee	\$50.00
Less security deposit	(-\$575.00)
Total amount due to the landlord	\$1,163.00

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,163.00**. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial Court 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: May 26, 2014

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Residential Tenancy Branch

