



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MND, MNSD, MNDC, FF, O

### 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;
- 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 his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord on February 15, 2014 by registered mail. I am satisfied that the landlord served this package and that the parties served one another with their written and photographic evidence packages in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for 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 parties agreed that the tenant first moved into the rental unit on or about May 15, 2009. The most recent in a series of fixed term Residential Tenancy Agreements covered the period from June 1, 2013 until May 31, 2014, when the tenancy was to end. According to the terms of the most recent one-year fixed term Residential Tenancy Agreement (the Agreement), monthly rent was set at \$1,500.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$700.00 security deposit paid on April 30, 2013.

The landlord entered into written evidence a copy of the joint move-in condition inspection report of the parties' joint inspection of the rental unit on or about June 1, 2009. It would appear that

each party also initialled annual inspection reports on the anniversary of the original commencement date of the tenancy each year.

On November 30, 2013, the tenant advised the landlord by mail that she was planning to end her tenancy by January 31, 2014. Both parties agreed that the tenant yielded vacant possession of the rental unit to the landlord on January 28, 2014, when the tenant handed in her keys during their joint move-out condition inspection of that date. Both parties signed the joint move-in and January 28, 2014 joint move-out condition inspection reports entered into written evidence by the landlord. The tenant also signed an end of tenancy document in which she indicated that she agreed to allow the landlord to retain her \$700.00 security deposit due to damage and scratches to walls, the stove, and the bathroom cabinet, and for damage to carpets and leaving the premises dirty at the end of her tenancy. The landlord also signed this document.

The landlord's application for a monetary award of \$2,721.75 included the following items listed in the Details of the Dispute section of his application for dispute resolution:

Item	Amount
Repair to Damaged Walls	\$892.50
Cleaning Carpets	90.00
Advertising for a New Tenant	89.25
Loss of Rent for this Rental Unit during the Last 3 Months of this Tenancy (3 months @ \$50.00 per month = \$150.00)	150.00
Breach of Contract (Loss of Rent for February 2014)	1,500.00
<b>Total Monetary Order Requested</b>	<b>\$2,721.75</b>

The tenant provided written evidence that she ended this tenancy early when she received approval to obtain a subsidized housing unit through BC Housing. She maintained that the landlord never informed her that she would be held responsible for any portion of the landlord's loss of rent for the remaining months of this tenancy. She also claimed that much of the damage claimed by the landlord was present when she started her tenancy. However, she provided written evidence that she and the landlord agreed to allow the landlord to keep her security deposit to cover the repair costs of what she described as minor damage.

#### 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. I find that the tenant was in breach of her fixed term Agreement because she vacated the rental premises prior to the May 31, 2014 date specified in that Agreement. As such, the landlord is entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of their tenancy Agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent for February 2014. 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.

The landlord and his agent testified that the landlord started advertising the availability of the rental unit on a popular rental website and in a newspaper on or about February 1, 2014. The landlord maintained that the landlord could not enter the rental unit until then, although it was unclear as to why that was the case. The tenant gave sworn testimony and written evidence that she was willing to let the landlord show the rental unit whenever he wanted. The new tenants signed another one-year fixed term tenancy agreement on February 7, 2014 for a tenancy that began on March 1, 2014. Monthly rent for this new tenancy was set at \$1,450.00, \$50.00 less than the landlord was receiving from the former tenant, the respondent in the landlord's application. The landlord entered into written evidence a copy of this new fixed term tenancy agreement.

Based on the evidence presented, I accept that the landlord is entitled to a monetary award in the amount of \$150.00 for the difference in rent he is to receive from the new tenants for the final three months of the tenant's fixed term Agreement that was to end on May 31, 2014.

I find that the landlord's delay in advertising the availability of the rental unit from November 30, 2013 until February 1, 2014 does not satisfy the requirement that the landlord attempt to mitigate the tenant's exposure to the landlord's rental losses from the tenant's decision to end her tenancy early. In making this finding, I note that the rental unit rented very quickly once the landlord did place advertisements for the availability of the rental unit. For these reasons, I dismiss the landlord's application for a recovery of lost rent from the month of February 2014 without leave to reapply.

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.

Section 38(4)(a) of the *Act* allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." In this case, the tenant signed a statement allowing the landlord to retain her \$700.00 security deposit as a way of resolving the landlord's concerns about damage arising out of this tenancy. Although the landlord signed the bottom of this statement, I find that the landlord's signature does not convey the landlord's agreement that this

constituted a full and final settlement of all claims for damage arising out of this tenancy. Since the tenant did agree to allow the landlord to retain her \$700.00 security deposit for damage, including damage to the walls, I find that the tenant has acknowledged significant responsibility for leaving the rental unit in a condition that exceeded reasonable wear and tear. I find that the tenant has given the landlord written authorization to keep her security deposit in accordance with section 38(4)(a) of the *Act*. I allow the landlord to keep the tenant's \$700.00 security deposit, which the tenant allowed the landlord to retain in order to compensate the landlord for this damage. No interest is payable on this security deposit over this period.

In considering the landlord's request for an additional \$192.50 beyond the amount agreed to by the tenant, I have taken into consideration Residential Tenancy Branch (RTB) Policy Guideline #40, which establishes guidelines regarding the useful life of various features of a residential tenancy. This Guideline notes that the average useful life of an interior paint job is set at four years. In this case, the tenancy lasted over four years. I find that the rental unit was ready for repainting by the end of this tenancy at the landlord's expense. Although there is no detailed breakdown in the \$892.50 repair bill entered into written evidence by the landlord to support the landlord's claim for damage and repairs to the walls, I find that at least some portion of this work would likely have been required even if there were no admitted damage to the walls arising out of this tenancy. For these reasons, I dismiss the remainder of the landlord's claim for the costs in repairing the walls of this rental unit as I find that the \$192.50 claimed by the landlord in excess of the \$700.00 agreed to by the tenant at the end of her tenancy constituted reasonable wear and tear, the responsibility of the landlord as part of a general repainting of the rental unit.

I have also considered the landlord's claim for professional carpet cleaning. Although the tenant may have attempted to clean the carpet herself and there is some evidence that a portion of the carpet was stained at the beginning of this tenancy, I find on a balance of probabilities that the landlord did incur additional costs to repair damage to the carpet that arose during this tenancy. I allow the landlord's claim of \$90.00, a claim supported by the landlord's submission of a February 10, 2014 receipt from a professional carpet cleaning company.

I also allow the landlord's claim for \$89.25 in advertising costs for running an advertisement in a newspaper. I find that this is a legitimate loss of the landlord directly resulting from the tenant's decision to end her tenancy early. The landlord entered into written evidence a copy of his bill in this amount.

As the landlord has been partially successful in this application, I allow the landlord to recover \$25.00 of his 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 losses and damages arising out of this tenancy, as well as part of his filing fee, and to retain the tenant's security deposit:

Item	Amount
Repair to Damaged Walls	\$700.00

Cleaning Carpets	90.00
Advertising for a New Tenant	89.25
Loss of Rent for this Rental Unit during the Last 3 Months of this Tenancy (3 months @ \$50.00 per month = \$150.00)	150.00
Less Security Deposit	-700.00
Plus Part of Filing Fee	25.00
<b>Total Monetary Order</b>	<b>\$354.25</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: June 02, 2014

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Residential Tenancy Branch