



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, (MNR), MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for 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; and to recover the filing fee from the tenant for the cost of this application. At the outset of the hearing the landlord requested a Monetary Order for unpaid rent. I have allowed the landlord to amend their application as the landlord has included the details of outstanding rent in the landlord's monetary claim. I believe the tenant would be aware of the landlord's claim for unpaid rent and by allowing this amendment it will not prejudice the tenant in anyway.

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 April 29, 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 for 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 month to month tenancy started on December 18, 2013 and ended on April 12, 2014. Rent for this unit was \$835.00 per month and was due on the first of each month. The tenant paid a security deposit of \$417.50 on December 20, 2013. The landlord conducted a move in condition inspection with the tenant at the start of the tenancy and the tenant was given at least two opportunities to attend a move out condition inspection; however, the tenant did not attend and the landlord completed the inspection and report in the tenant's absence. The tenant provided a forwarding address on April 11, 2014.

The landlord testified that the tenant failed to pay rent for April and was served with a 10 Day Notice to End Tenancy. The landlord applied for an Order of Possession through the Direct Request process. The landlord was granted an Order of Possession at that proceeding which was effective on April 12, 2014. The tenant vacated on that day; however, no rent has been paid for April. The landlord seeks to recover the amount of \$835.00 for rent for April, 2014.

The landlord testified that the tenant had signed a crime free addendum to the tenancy agreement. The tenancy agreement also contains a clause that prohibits smoking in the unit. When the landlord returned from vacation on March 26, 2014 they found a succession of people coming through the unit and the landlord had some suspicions of drug use. The police were contacted and they carried out surveillance of the unit with

the landlords. The landlord testified that many people were seen coming and going from the unit and the police arrested some of the tenant's visitors. The landlord gave written Notice of Entry and entered the unit on March 29, 2014. The landlord testified that they found evidence of cigarette smoking and drug paraphernalia in the unit. The smell inside the unit of tobacco and marijuana was intense and the tenant was given a One Month Notice to End Tenancy for cause.

The landlord testified that due to the arrests made by the police the landlord thought it would be advisable to have the locks to the unit changed even though the tenant did return the keys, in the event the tenant had copied any keys for her guests. The landlord seeks to recover this cost of \$89.58 and has provided a receipt in evidence.

The landlord testified that due to the intense smell of smoke and marijuana in the unit the entire unit had to be scrubbed clean, the window coverings also had to be cleaned. The landlord has provided a detailed invoice from the cleaners who have documented that they cleaned for 20 hours at \$20.00 per hour. The landlord seeks to recover \$400.00 for this work.

The landlord testified that the tenant failed to clean the carpets in the unit and these also smelt of smoke and marijuana. The landlord seeks to amend her claim to include this cost of \$103.95 and has provided the invoice in evidence.

The landlord requests an Order to keep the security deposit in partial satisfaction of her claim. The landlord also seeks to recover the \$50.00 filing fee for the Direct Request Proceeding and the \$50.00 filing fee for this application.

### 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 application for unpaid rent, I refer the parties to s. 26 of the *Act* which states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I am satisfied from the evidence before me that the tenant failed to pay rent for April, 2014. I therefore uphold the landlord's claim for a Monetary Order to recover \$835.00.

With regard to the landlord's claim to recover the cost for damage to the unit; the tenant was aware that this was a non smoking unit and as such it is the tenant's responsibility to ensure that neither the tenant nor the tenant's guests smoke in the unit. This includes cigarettes and any other substances. I am satisfied from the evidence before me that the tenant or person permitted on the property by the tenant have cause damage to the unit through smoking and as such I uphold the landlord's claim to recover the costs for cleaning the unit and blinds of \$400.00. The landlord omitted to include carpet cleaning on her application. However, I am satisfied that the carpets would also have been affected by the smell of smoke from tobacco and marijuana and therefore I will allow the landlord to amend their application to include the cost of \$103.95 for carpet cleaning.

With regard to the landlord's claim for the costs associated to change the locks; the tenant signed a crime free addendum to the tenancy agreement; I am satisfied from the evidence before me that the tenant allowed people to use, buy or sell illegal substances in the unit; however, the tenant did return the keys to the unit and I have insufficient evidence before me that the tenant allowed other to have copies of the keys. As this was the landlord's choice to change the locks I am not satisfied that this cost should be borne by the tenant. The landlords claim for \$89.58 is therefore dismissed.

I Order the landlord to keep the security deposit of \$417.50 pursuant to s. 38(4)(b) of the *Act*, in partial satisfaction of the landlord's monetary claim. The landlord is also entitled to recover the filing fee of \$50.00 for this application only pursuant to s. 72(1) of the *Act*. The landlord's claim for the \$50.00 filing fee for the Direct Request Proceeding cannot be awarded at this hearing as it was a fee incurred for a different application. This section of the landlord's claim is therefore dismissed. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for April	\$835.00
Cleaning costs including blinds	\$400.00
Carpet cleaning	\$103.95
Filing fee	\$50.00
Less security deposit	(-\$417.50)
Total amount due to the landlord	\$971.45

### Conclusion

I HEREBY FIND in partial favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$971.45 pursuant to s. 67 and 72(1) of the *Act*. 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: August 28, 2014

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Residential Tenancy Branch

