



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SEB PROJECTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

MND MNR MNSD FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the security deposit, and to recover the cost of the filing fee.

Two agents for the landlord and a witness for the landlord appeared at the teleconference hearing. During the hearing the agents were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the teleconference hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application"), and documentary evidence were considered. The agents referred to an Application for Substitute Service the landlord had been granted on June 11, 2014, the file number of which has been included on the cover page of this Decision for ease of reference. Based on the landlord having been granted an Order for Substitute Service dated June 11, 2014, and the testimony of the agents that the tenant was served as the tenant's work address by registered mail and having provided the registered mail tracking number in evidence, I find that the tenant was sufficiently served in accordance with section 89(1)(e) of the *Act*. As the agents confirmed that the registered mail package was returned as "unclaimed", I note that refusal or neglect on the part of the tenant to accept or receive registered mail does not constitute grounds for a Review Consideration.

### Preliminary and Procedural Matter

During the hearing, the agents for the landlord requested to withdraw the portion of their monetary claim related to management fees in the amount of \$350.00. This was permitted as I find that a reduction in the monetary claim against the tenant does not prejudice the tenant in any way. Given the above, the landlord's monetary claim of \$3,796.66, before the security deposit is considered, is reduced by \$350.00 to the new total amount of the landlord's claim, is reduced to \$3,446.66, which does not include the recovery of the cost of the filing fee of \$50.00, which will be addressed later in this Decision.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A periodic, month to month tenancy agreement began on June 15, 2013. Monthly rent in the amount of \$1,300.00 was due on the first day of the month. A security deposit of \$650.00 was paid by the tenant at the start of the tenancy which the landlord continues to hold. The tenancy agreement did not include electricity or heat in the monthly rent, which was the responsibility of the tenant. The tenant vacated the rental unit on January 19, 2014.

The landlord has claimed \$3,446.66 comprised of the following:

Item Description	Amount
1. Unpaid utilities between June 15, 2013 and September 3, 2013	\$238.47
2. Two NSF cheques	\$14.00
3. Call out emergency reimbursement due to non-emergency	\$126.00
4. Unpaid rent for the month of January 2014	\$1,300.00
5. Junk removal	\$140.00
6. Drywall repair and repainting	\$819.00
7. Broken window	\$245.18
8. Cost of cleaning	\$249.90
9. Unpaid utilities between September 3, 2013 to end of tenancy	\$314.11
<b>Total</b>	<b>\$3,446.66</b>

The agents stated that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated January 8, 2014 which indicates that the tenant failed to pay \$1,300.00 in rent due January 1, 2014. The agents stated that the tenant did not dispute the 10 Day Notice or pay the rent owed and vacated the rental unit on January 19, 2014. The agents stated that the tenant failed to provide a written forwarding address to the landlord since vacating the rental unit on January 19, 2014 and that the tenant left the rental unit without having it cleaned, left junk behind in the rental unit and that the tenant damaged the rental unit.

Regarding item #1, the landlord has claimed \$238.47 for unpaid utilities for the period of June 15, 2013, the date the tenancy began, and September 3, 2013, the date when the tenant finally placed the utilities in his name. The agents testified that the amount being claimed, \$238.47,

which is supported by receipts submitted by the landlord, totals the amount for the period of time from the start of the tenancy date to the date when the tenant finally put the utilities in his name as the utilities were not included in the monthly rent.

Regarding item #2, the landlord has claimed \$14.00 for the cost of two NSF ("non-sufficient funds") cheques that were given to the landlord by tenant that were returned by the bank as NSF due to the tenant having insufficient funds in his bank account. The landlord submitted copies of both NSF cheques in evidence in support of this portion of their claim.

Regarding item #3, the landlord has claimed \$126.00 to be reimbursed for the cost of what the tenant had alleged as an emergency related to a broken furnace. The agents testified that there in fact was no emergency at all as the contractor they arranged to attend to the alleged emergency, determined that there was no emergency or repair required as the tenant had never activated his gas account and that the furnace did not work due to tenant failing to have his gas turned on at the rental unit. The landlord submitted a receipt in the amount of \$126.00 in support of this portion of their claim.

Regarding item #4, the landlord has claimed \$1,300.00 unpaid rent for the month of January 2014, which is supported by the 10 Day Notice submitted in evidence and the testimony of the agents. The agents stated that rent for January 2014 has never been paid by the tenant.

Regarding item #5, the landlord has claimed \$140.00 for junk removal. The agents referred to several photos submitted in evidence which support that junk was left behind by the tenant in the rental unit at the end of the tenancy. The landlord also submitted a receipt in the amount of \$140.00 for junk removal dated January 24, 2014.

Regarding item #6, the landlord has claimed \$819.00 for the cost of repairing drywall damage and repainting due to damage the agents stated was caused by the tenant. The agents called witness, B.B., who testified under oath that he was the one who took the photos of the drywall damage after the tenant vacated the rental unit and that he was the landlord's agent who completed the incoming condition inspection report with the tenancy at the start of the tenancy. A copy of the incoming condition inspection report was submitted in evidence. The agents stated that the hole in the drywall shown in the photos submitted in evidence was in the master bedroom and that the condition inspection report supports that there were only nail holes in the master bedroom and that the walls were in "good" condition. A receipt dated January 28, 2014 was submitted in evidence supporting the amount being claimed of \$819.00 for repairing damaged drywall and repainting.

Regarding item #7, the landlord has claimed \$245.18 to repair a broken window which the agents testified was not broken at the start of the tenancy. The landlord submitted a colour photo supporting that a window was left broken by the tenant at the end of the tenancy. The landlord submitted a receipt in the amount of \$245.18 dated February 3, 2014 which supports this portion of the landlord's claim. Witness B.B. testified that the window was not damaged at

the start of the tenancy and that he took the photo of the damaged window after the tenant vacated the rental unit.

Regarding item #8, the landlord has claimed \$249.90 for the cost of cleaning the rental unit, which the agents stated the tenant failed to clean before vacating the rental unit. The landlord submitted several photos which support that the rental unit was left in a dirty condition at the end of the tenancy. The landlord submitted a receipt in the amount of \$249.90 in support of this portion of their claim. The agents stated that the tenant left food items in the cabinets, failed to do any cleaning and left his junk in the rental unit.

Regarding item #9, the landlord has claimed \$314.11 for the cost of unpaid utilities that were not paid by the tenant between the date the tenant placed the utilities in his name on September 3, 2013 and the end of tenancy date, January 19, 2014, which is the date the tenant vacated the rental unit. The landlord submitted a letter indicating that if that amount of \$314.11 in unpaid utilities was not paid, the full amount would be attached to the landlord's tax account. The agents stated that they paid the full amount of \$314.11 to avoid the unpaid utilities being attached to the tax account, and are seeking reimbursement as a result.

### Analysis

Based on documentary evidence of the landlord and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

**Items 1 through 9** – I find the landlord has met the burden of proof for each of the nine items being claimed. Section 37 of the *Act* applies and states:

#### **Leaving the rental unit at the end of a tenancy**

**37** (2) When a tenant vacates a rental unit, the tenant must

**(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**

**(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.**

**[my emphasis added]**

Based on the photos submitted and the undisputed testimony of the agents and the witness for the landlord, I find that the tenant breached section 37 of the *Act* by failing to leave the rental unit in reasonably clean condition at the end of the tenancy. I also find that the tenant breached section 26 of the *Act* by failing to pay January 2014 rent of \$1,300.00 on January 1, 2014 or any date thereafter and that the landlord suffered a loss as a result.

I find that the photos, receipts and condition inspection report submitted support all of the items being claimed and as a result, I accept the undisputed testimony of the agents and the landlord witness. Based on the above, **I grant** the landlord **\$3,446.66** for all of the nine items as claimed.

As the landlord's application had merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

**I find** the landlord has established a total monetary claim in the amount of **\$3,496.66**, comprised of \$3,466.66 as claimed, plus \$50.00 for the recovery of the cost of the filing fee. The landlord continues to hold the tenant's security deposit of \$650.00, which has not accrued interest since the start of the tenancy.

**I ORDER** the landlord to retain the tenant's full security deposit of \$650.00 in partial satisfaction of the landlord's monetary claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$2,846.66**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The landlord has established a total monetary claim of \$3,496.66. The landlord has been ordered to retain the tenant's full security deposit of \$650.00 in partial satisfaction of the landlord's monetary claim.

The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$2,846.66. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 10, 2014

---

Residential Tenancy Branch

