



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, 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 unpaid rent, 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- other unspecified remedies.

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 the landlord's original and amended dispute resolution hearing packages sent by the landlord by registered mail on May 22, 2014 and July 8, 2014. The tenant also confirmed that she received copies of the landlord's written evidence. I am satisfied that the landlord served the above documents to the tenant in accordance with the *Act*.

The landlord's amended dispute resolution hearing package requested an increase in the monetary award sought from \$2,393.20 to \$3,877.43. I have considered the landlord's request for the increased monetary award identified in the amended application for dispute resolution.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for 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? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This fixed term tenancy began on August 1, 2011. On June 26, 2013, the parties signed the last of a series of one-year fixed term Residential Tenancy Agreements that called for this tenancy to end by July 31, 2014. Monthly rent was set at \$1,700.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$850.00 security deposit paid on July 15, 2011.

The landlord entered into written evidence a copy of the signed inspection reports regarding the joint move-in and joint move-out condition inspections of July 29, 2011 and May 2, 2014.

The tenant testified that on March 1, 2014, she mailed the landlord's property manager a notice advising that she intended to end her tenancy by April 30, 2014. She said that she vacated the rental unit by April 28, 2014, and handed the keys to the landlord's representatives on April 30, 2014. The landlord's agent (the landlord) testified that the tenant did not provide notice of her intent to end her vacancy and the landlord did not realize she had moved until after she had already vacated the premises.

The landlord's amended application for a monetary award of \$3,877.43 included:

<b>Item</b>	<b>Amount</b>
Unpaid May 2014 Rent	\$1,700.00
Loss of June 2014 Rent	1,700.00
Repairs and Rubbish Removal	99.75
Cleaning	200.00
Carpet Cleaning	93.45
Rekeying of Mailbox	84.23
<b>Total of Above Items</b>	<b>\$3,877.43</b>

### 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 tenancy agreement because she vacated the rental premises prior to the July 31, 2014 date specified in that agreement. As such, the landlord is entitled to compensation for losses incurred as a result of the tenant's 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 May or June 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 submitted written evidence and sworn testimony that advertisements were placed on the rental website that the landlord typically used to locate tenants for this rental unit. She said that the owner of the suite decided to move into the premises as of July 1, 2014. Although the tenant testified that someone moved into the rental unit as of May 15, 2014, the landlord gave sworn testimony that this was not so. Without any evidence other than her sworn testimony to rely on with respect to her allegation, I find on a balance of probabilities it more likely than not that the landlord did attempt to the extent that was reasonable to re-rent the premises for May and June 2014, and occupied the rental unit on or about July 1, 2014. 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 those months, and moved into the rental unit by July 1, 2014, so as to reduce any further losses. For these reasons, I allow the landlord's application for a monetary award of \$1,700.00 for each of May and June 2014.

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.

In this case, the tenant did not dispute the landlord's entitlement to monetary awards for carpet cleaning or the replacement of the key for the mailbox, the latter of which she admitted to having lost during her tenancy. I allow the landlord a monetary award of \$93.45 for carpet cleaning and \$84.23 for the rekeying of the mailbox, receipts for which were entered into written evidence by the landlord.

After reviewing the joint move-in and move-out condition inspection reports, which included references to cleaning and repairs that were necessary at the end of this tenancy, I find that the landlord has submitted evidence of damage arising out of this tenancy. The landlord submitted receipts to demonstrate the extent of the losses incurred in cleaning the rental unit, removing rubbish left behind after this tenancy and undertaking minor repairs. Although the tenant objected to the amount of the claims submitted by the landlord for cleaning and repairs, she did not dispute the landlord's claim that damage occurred during this tenancy. As the copy of the joint move-out condition inspection report submitted by the landlord was difficult to read, I allow the

landlord a total of \$100.00 for cleaning and \$99.75 for repairs and the removal of rubbish at the end of this tenancy. I grant this allowance for cleaning and damage to the rental unit as I am satisfied by the sworn oral testimony and written evidence that the tenant did not abide by the requirement in section 37(2) of the *Act* to “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.”

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. I also allow the landlord to recover the filing fee from the tenant.

### Conclusion

I issue a monetary Order under the following terms, which allows the landlord to recover unpaid rent, loss of rent, damage arising out of the tenancy and the filing fee and to retain the tenant's security deposit:

Item	Amount
Unpaid May 2014 Rent	\$1,700.00
Loss of June 2014 Rent	1,700.00
Repairs and Rubbish Removal	99.75
Cleaning	100.00
Carpet Cleaning	93.45
Rekeying of Mailbox	84.23
Less Security Deposit	-850.00
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$2,977.43</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: September 23, 2014

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Residential Tenancy Branch

