



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MND, MNSD, MNDC, FF, O

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; 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 one of the parties (the tenant), was done in accordance with section 89 of the *Act*; served by registered mail on July 24, 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 other party named on the landlord's application has not been served in accordance with s. 89 of the *Act* and therefore any Orders issued will be in the name of the tenant only.

The landlord's agent (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 or utilities?
- 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?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testified that this fixed term tenancy started on August 02, 2013 and was due to end on August 01, 2014. Rent for this unit was \$2,600.00 a month due on the 2nd of each month in advance. The tenant paid a security deposit of \$1,300.00 on August 02, 2013. This unit was rented by company and the company is named as the tenant on the tenancy agreement although it was an employee for the company that resided in the unit.

The landlord testified that the occupant of the unit called the landlord and informed the landlord that they would be moving out of the unit. The landlord determined later that this occupant had vacated the unit some time in early February, 2014. The tenant had provided postdated checks to cover the rent; however, when the landlord attempted to cash February's rent cheque it was refused at the bank. The landlord contacted the tenant and was told the occupant no longer worked for the company. The tenant sent in cleaners and someone to remove garbage.

The landlord testified that advertisements were placed on three internet sites in February, 2014 in an attempt to get the unit re-rented as soon as possible and these adverts were renewed until the unit was re-rented. The landlord refers to the address of the unit shown on the advertisements and testified that they purposely put the wrong

house number in the advert as the house if vacant and they seek to deter any break in attempts on an empty house. The landlord testified that the rent was also lowered to \$2,500.00 to help find new tenants. The landlord has provided some documentary evidence to show advertisements placed and e-mails from prospective tenants inquiring about the unit in February, 2014.

The landlord testified that the unit was not re-rented until August, 2014. The landlord seeks to recover a loss of rental income from February to July, 2014 of \$15,600.00 as per the tenancy agreement.

The landlord testified that the occupant did not return all the keys to the unit. Only the front door key was found in a shoe box left outside the unit. The landlord had to have the external and internal locks rekeyed. The landlord has provided documentary evidence showing the invoices for this work and seeks to recover the amount of \$260.00.

The landlord testified that a lamp was left damaged in the unit. The lamp cover was missing and the landlord's handyman tried to purchase just the lamp cover but was unable to do so, so the whole lamp had to be replaced at a cost of \$71.50. The landlord has provided a receipt in documentary evidence.

The landlord testified that the occupant had left damage on the bedroom wall. It appeared that someone had tried to repair some damage and the paint was mismatched. In the living room there was some sort of plastic on the walls which had been screwed in. This left holes which had to be repaired and the walls repainted to match. The landlord seeks to recover \$400.00 for this work and has provided a receipt in documentary evidence.

The landlord testified that the tenant failed to return the garage remote. This was an older model which could not be replaced. Due to this the sensor and remote opener

mechanism all had to be replaced. The landlord seeks to recover \$390.00 for this work and has provided the invoice in documentary evidence.

The landlord testified that they had the address of the tenant but not the occupants forwarding address. The landlord agreed that they did not return the security deposit to the tenant's known address within 15 days of the end of the tenancy. The landlord therefore agreed that the tenant is entitled to recover double the security deposit and to deduct this from the rent owed by the tenant.

The landlord seeks to recover the filing fee of \$100.00 from the tenant.

### 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. I find although the tenant named on the tenancy agreement did not reside in the rental unit, they did rent the unit from the landlord for an employee and therefore are responsible for meeting the terms of the tenancy agreement.

With this in mind, I refer the parties to s. 45(2) of the *Act* which provides for how a tenant may give notice to end a tenancy:

**45** (2) *A tenant may end a fixed term 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,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) 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 find this was a fixed term tenancy which was not due to end until August 01, 2014 as agreed in the tenancy agreement between the parties. The tenancy effectively ended when the tenant or occupant abandoned the unit early in February, 2014. No rent was received from February to July, 2014.

When a tenant has breached the tenancy agreement the landlord is entitled to recover any loss of rent up to the earliest time that the tenant could legally have ended the tenancy as long as the landlord has taken steps to try to mitigate the loss by trying to re-rent the unit as soon as possible. I am satisfied from the evidence presented that the landlord was unable to re-rent the unit for the remainder of the term of the tenancy despite efforts made by the landlord to advertise and show the unit to prospective tenants. The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. Consequently I find in favour of the landlord's claim to recover the amount of **\$15,600.00** in a loss of revenue for six months.

With regard to the landlord's claim for damages; I am satisfied with the undisputed evidence before me that the tenant failed to return all the keys to the unit at the end of the tenancy. This resulted in the landlord incurring costs to have the unit re-keyed. The landlord is therefore entitled to recover the cost for this work of **\$260.00**.

With regard to the landlord's claim for a lamp; I am satisfied with the undisputed evidence before me that the cover on the lamp was missing. As the tenant failed to replace the cover on the lamp at the end of the tenancy, the landlord incurred costs in replacing the lamp. I therefore find the landlord has established a claim for **\$71.50** to replace the lamp and may recover this amount from the tenant.

With regard to the landlord's claim for painting; I am satisfied with the undisputed evidence before me that the occupant caused some damage to the walls in the unit. This damage was not repaired at the end of the tenancy and the landlord incurred costs to have the walls repaired and repainted. I therefore find the landlord has established a claim for repair and painting of \$400.00.

With regard to the landlord's claim for a new garage remote system; the landlord testified that the tenant did not return the remote control for the garage door. As this control was an older model it could not just be replaced. Instead the whole remote system including the sensor had to be replaced. I am not satisfied from the evidence before me that the entire remote system had to be replaced because the tenant did not return the remote. The landlord has insufficient evidence to show that the older model remote could no longer be obtained and consequently, I find the landlord has not established a claim of \$392.00 to replace the entire system. This section of the landlord's claim is therefore dismissed.

With regard to the landlord's claim to keep the security deposit; the landlord agreed at the hearing that they had not returned the security deposit to the tenant or filed an application to keep the security deposit within the 15 allowable days after the tenancy ended. The landlord also agreed that they were aware of the tenant's address as this was a company who rented the unit for one of their employees. The landlord agreed that the tenant would therefore be entitled to double the security deposit. I therefore uphold the landlord's claim to keep the security deposit pursuant to s. 38(4)(b) of the *Act*. The security deposit plus the doubled portion to an amount of **\$2,600.00** will be deducted from the landlord's monetary claim.

As the landlord's claim has merit I find the landlord is entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Loss of revenue for six months	\$15,600.00
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Re-keying locks	\$260.00
Replacement lamp	\$71.50
Repair and painting	\$400.00
Filing fee	\$100.00
<b>Subtotal</b>	<b>\$16,431.50</b>
Less security deposit	(\$1,300.00)
Less doubled portion of security deposit owed to the tenant	(\$1,300.00)
<b>Total amount due to the landlord</b>	<b>\$13,831.50</b>

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$13,831.50** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the respondent. If the respondent fails to pay the Order, the Order is enforceable 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: January 20, 2015

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Residential Tenancy Branch

