



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ~~OPB~~, MND, MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an amended application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of this hearing by registered mail on December 3, 2014, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlord. The landlord testified that the documents were served on that date and in that manner and has provided a copy of the Canada Post cash register receipt bearing that date as well as a Registered Domestic Customer receipt from Canada Post addressed to the tenant, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony has been reviewed and is considered in this Decision.

### Issues to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and more specifically for loss of rental revenue?

- Should the landlord be ordered to keep the security deposit or pet damage deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this fixed term tenancy began on July 15, 2011 and was renewed from time to time. The latest term expires on June 14, 2015, however the tenant moved out of the rental unit on December 21, 2014. Rent in the amount of \$1,500.00 per month was payable under the tenancy agreement on the 15<sup>th</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$700.00 in addition to a pet damage deposit in the amount of \$300.00. Both deposits are still held in trust by the landlord, and a copy of the tenancy agreement has been provided.

The landlord further testified that on November 20, 2014 the tenant emailed the landlord stating that the tenant was moving out but gave no specific date. Then another email was received from the tenant about 10 days later, a copy of which has been provided stating that the tenant was moving out on December 15, 2015. However, the tenant moved out on December 21, 2014. The rental unit was re-rented starting January 24, 2015.

The landlord further testified that no move-in or move-out condition inspection reports were completed, however during the tenancy the tenant's dogs damaged the hardwood floor. Also, the tenants replaced a window in the kitchen with an old air conditioning unit. The landlord removed it and replaced the window with a new one.

Other damages also exist, and the landlord has provided photographs with estimated amounts for repair. The estimates total \$4,990.00 which includes the time it will take or has taken the landlord or contractors to complete the repairs. The tenant also left many sheets of drywall, drawers from dressers, old paint cans and other items collected by the tenant in or around the rental unit. Some of the repairs and removal of items has been completed but there is still more work to do.

The landlord also received an email from the tenant after vacating, during the last week of December, 2014 requesting the security deposit and pet damage deposit. The landlord replied that there were damages and debris left behind and the lease was broken. The tenant has not sent a reply.

The landlord claims \$4,990.00 as against the tenant and filed the application for dispute resolution on December 29, 2014.

### Analysis

Firstly, with respect to the landlord's claim for damage to the unit, site or property, in order to be successful in such a claim, the onus is on the landlord to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to reduce such damage or loss.

Further, the *Residential Tenancy Act* places the onus on the landlord to ensure that the move-in and move-out condition inspection reports are completed and the regulations go into great detail of how that is to happen. Also, a tenant is not responsible for damages that amount to normal wear and tear. In this case, the landlord did not cause either report to be completed.

I have reviewed the photographs and other documents provided by the landlord and it's clear that the rental unit requires painting throughout and the hardwood floor requires re-sanding and staining, however I have no evidence before me of the condition prior to the commencement of the tenancy. Therefore, I find that the landlord has failed to satisfy element 2 in the test for damages. The landlord has provided numerous photographs and has typed onto the pages descriptions and ball-park figures, but there is no evidence as to the actual costs. Estimates can be admissible in such a claim if a written estimate is provided by someone who has knowledge of the costs. The landlord has not provided contractors' estimates or pricing from commercial suppliers for supplies, or any other evidence, and I find that the landlord has failed to establish element 3 in the test for damages.

With respect to the landlord's claim for loss of rental revenue, I have reviewed the tenancy agreement, and it is clear that the tenant moved out of the rental unit prior to the end of the fixed term, having paid rent to December 14, 2014. The rental unit was re-rented starting January 24, 2015 and considering the photographs provided by the landlord, I am satisfied that the landlord would not have been able to re-rent prior to that and I find that the landlord has established a monetary claim in the amount of \$1,500.00 for loss of rental revenue to January 14, 2015 and a per diem amount totalling \$483.87 to the date of re-renting, for a total of \$1,983.87.

Since the landlord has been partially successful the landlord is also entitled to recovery of the \$50.00 filing fee.

I hereby order the landlord to keep the \$700.00 security deposit and the \$300.00 pet damage deposit in partial satisfaction, and I grant the landlord a monetary order for the difference in the amount of \$1,033.87.

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$700.00 security deposit and the \$300.00 pet damage deposit, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,033.87.

This order is final and binding and may be enforced.

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: March 20, 2015

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Residential Tenancy Branch

