



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNR, MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a Monetary Order for unpaid rent, for loss of rent, for compensation under the Act and the tenancy agreement, for damage and cleaning of the rental unit, for an Order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified he personally served the Tenant with the Notice of Hearing and the Landlord's Application on December 15, 2014. The Landlord confirmed that although the tenancy agreement and original Notice of Application referred to another tenant, C.B., he did not serve C.B. with the materials, nor was he seeking an Order against her.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement signed April 11, 2014 which included a 3 page, 28 clause Addendum. The fixed term tenancy began April 15, 2014 and was to end April 30, 2015. The monthly rent was \$800.00 per month and the Tenant paid a security deposit in the amount of \$400.00 and a pet damage deposit in the amount of \$400.00.

The Landlord alleged that the Tenant vacated the property in August of 2014, prior to the expiration of the fixed term. Further, the Landlord alleged that the Tenant left the rental unit in an un-rentable condition such that the Landlord incurred substantial costs to clean and repair the rental unit.

The Landlord testified that the rental unit required 10 hours of cleaning. The Landlord described the rental unit as "filthy" and alleged that the Tenant made no effort to clean or remove his garbage. The Landlord stated that the amount of hair and filth in the rental unit suggested to him that the Tenant's pets were also responsible for the condition of the rental unit. Submitted in evidence were two receipts, one for cleaning in the amount of **\$80.00** and the other for **\$136.50** for professional carpet cleaning.

As the Tenant left the tenancy before the expiration of the fixed term, the Landlord sought **\$500.00** in liquidated damage pursuant to clause 28 of the addendum to the rental agreement which provided as follows:

28. If the tenant wishes to break the lease and leave before the expiration of the lease, the tenant agrees to pay the fair liquidated damage amount of \$500. This amount is to cover the time and costs it takes to find and instate a new tenant- for instance, this money will be used for such things as advertising showing the suite, screening potential tenants, drawing a new lease, doing the check in and check out of each tenant and performing other duties as required. This does not release the tenant from the obligation to pay rent until such a new tenant is found. The tenant authorizes the landlord to use funds from the damage deposit for this purpose.

[Reproduced as Written]

The Landlord claimed that the rental unit was not re-rented until November 1, 2014 and as such he also sought compensation for lost rent for the months September 2014 and October 2014 for a total of **\$1,600.00** in lost rent. He submitted that he made his best efforts to minimize the loss by advertising on several internet rental sites, and placed a "For Rent" sign outside the rental building.

The Landlord claims as follows:

Cleaning	\$80.00
Carpet cleaning	\$136.50
Liquidated damages	\$500.00
Loss of rent for September 2014	\$800.00
Loss of rent for October 2014	\$800.00
Filing fee	\$50.00
Filing fee	50.00
<b>Total claimed</b>	<b>\$2,366.50</b>

The Landlord requested an Order that he be permitted to retain the security deposit of \$400.00 and the pet damage deposit of \$400.00 in partial satisfaction of the amounts claimed.

The Tenant failed to attend the hearing and dispute the Landlord's claims.

### Analysis

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 whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the

Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords took reasonable steps to minimize the damage or losses that were incurred.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenant did not clean the unit and this has caused losses to the Landlord. I accept the undisputed evidence of the Landlord as to the general cleaning and carpet cleaning required as well as the associated costs and award the Landlord the amounts claimed in the amount of **\$80.00** and **\$136.50** respectively.

I also award the Landlord the **\$500.00** liquidated damages as claimed. The Tenant agreed to this sum when entering into the residential tenancy agreement and the Landlord is entitled to claim this amount.

I find that the Tenant, in failing to remain in occupation until the expiry of the fixed term, cause the Landlord to lose rental income for October and November 2014 and I accept the undisputed evidence of the Landlord that despite his best efforts to re-rent the rental unit, that it was not rented until November 1, 2014. I award the Landlord the **\$1,600.00** claimed for these two months.

The Landlord, having been successful, is entitled to recover the \$50.00 fee paid to file his application. Therefore, I allow the Landlords **\$2,366.50** for the following amounts claimed:

Cleaning	\$80.00
Carpet cleaning	\$136.50
Liquidated damages	\$500.00
Loss of rent for September 2014	\$800.00
Loss of rent for October 2014	\$800.00
Filing fee	\$50.00
Filing fee	50.00
<b>Total allowed</b>	<b>\$2,366.50</b>

I order that the Landlords retain the security and pet damage deposit in the amount of **\$800.00** in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$1,566.50**.

This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

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: June 04, 2015

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Residential Tenancy Branch

