



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, 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; and
- authorization to recover its filing fee for this application pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1320 in order to enable the tenant to connect with this teleconference hearing scheduled for 1300. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent testified that he personally served the tenant with the dispute resolution package on 15 May 2015. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

### Preliminary Issue – Landlord's Amendment Request

At the hearing the agent asked to amend the landlord's application to include damage costs for carpet cleaning and general cleaning. The agent also asked to amend the rental loss claimed from \$845.00 to \$197.17.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

The landlord did not set out in its application that it sought compensation for cleaning. The tenant did not have notice that this issue was before me. As the tenant did not have notice of that, application it would violate the rules of procedural fairness to allow this amendment. The amendment is refused. This does not prevent the landlord from bringing this claim in a subsequent application should it decide to do so.

The agent testified that a new tenancy began 8 June 2015. The landlord received part rent for June. The landlord seeks to reduce its rental loss accordingly. There is no prejudice to the tenant in allowing the landlord to reduce its claim. The landlord's amendment to reduce the rental loss claimed from \$845.00 to \$197.17 is allowed.

#### Issue(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 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

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 5 March 2013. Monthly rent of \$845.00 was due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$417.50, which was collected 5 March 2013.

The agent testified that on 5 May 2015 he personally served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) to the tenant. The notice originally set out that the tenant had failed to pay \$1,907.00 of rent that was due 1 May 2015. The agent testified that the tenant corrected the amount: in fact, the tenant owed \$1,800.00. The tenant and agent agreed to the change. The tenant acknowledged service of the 10 Day Notice on 5 May 2015. The 10 Day Notice set out that the tenant was to vacate the rental unit by 19 May 2015.

The agent testified that the tenant did not give any indication that he intended to dispute the 10 Day Notice. The agent testified that on the May long weekend (15 to 18 May 2015) the tenant vacated the rental unit.

The agent testified that the landlord has not received any payments since the issuance of the 10 Day Notice. The agent testified that to the best of his knowledge he does not know of any reason that would entitle the tenant to deduct any amount from rent.

The landlord claims for \$2,047.17:

Item	Amount
Rent Arrears	\$1,800.00
Rent Loss June 1-7	197.17
Recover Filing Fee	50.00
<b>Total Monetary Order Sought</b>	<b>\$2,047.17</b>

### Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlord provided sworn and uncontested testimony that the tenant owed \$1,800.00 in rent arrears. The tenant occupied the rental unit as of 1 May 2015, the date rent was due, and continued to occupy the rental unit until at least 15 May 2015. There is no evidence before me that indicates that the tenant was entitled to deduct any amount from rent. Further the tenant has endorsed the amount of rent arrears on the 10 Day Notice. Accordingly, I find that the landlord has proven, on a balance of probabilities, its entitlement to the rent arrears in the amount of \$1,800.00.

The landlord claims for a rent loss for the period 1 to 7 June 2015. The 10 Day Notice was issued on 5 May 2015. The landlord ended the tenancy as it was entitled to do pursuant to section 46 of the Act. The landlord did not provide any evidence to suggest that, due to the tenant's actions or neglect, the rental unit was unsuitable for rent as of 1 June 2015. The only breach of the Act alleged by the landlord is the tenant's breach of section 26 of the Act. The landlord did not provide any evidence of advertisements or postings in newspapers of the rental unit's availability for 1 June 2015.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the

loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

In this case, I find that the landlord has failed to prove that it mitigated its damages. In particular, the landlord has not provided me with any advertisements that indicate that the rental unit was advertised for rent. As the landlord has failed to mitigate its damages, I find that it is not entitled to recover the rental loss from the tenant.

As the landlord has been successful in this application, it is entitled to recover the filing fee from the tenant. The landlord is entitled to retain the security deposit in partial satisfaction of the monetary amount awarded.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,432.50 under the following terms:

Item	Amount
Rent Arrears	\$1,800.00
Offset Security Deposit Amount	-417.50
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,432.50</b>

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 23, 2015

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Residential Tenancy Branch