



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes FF, MNSD, MNDC, MNR, MND

### Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant has filed an application seeking the return of their security deposit. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### Issue to be Decided

Is either party entitled to a monetary order as claimed?

### Background, Evidence

The landlord's testimony is as follows. The tenancy began on July 1, 2014 and ended on April 1, 2015. The tenants were obligated to pay \$1700.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$850.00 security deposit. The landlord stated that the tenants withheld rent without his authorization. The landlord stated that the tenants paid rent consistently late and wants to charge them late fees. The landlord stated that due to the tenants actions the strata fined him \$50.00. The landlord stated that the tenant did not pay the move in and move out fee of \$200.00.

The Landlord is applying for the following:

1.	Rent for November 2014 and March January	\$480.00
2.	Late Fees	\$150.00
3.	Strata Fine	\$50.00
4.	Move In Move out fee	\$200.00
	Total	<b>\$880.00</b>

The tenants' testimony is as follows. The tenant stated that she withheld rent because the patio door was broken and needed to be repaired. The tenant stated that she withheld rent for

cleaning as the unit was “disgusting and filthy” when she moved in. The tenant stated that she just wants the landlord to return the entire deposit.

### Analysis

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

I address the landlords' claims and my findings as follows.

1. Rent for November 2014 and January 2015 - \$480.00.

The landlord stated that the tenant withheld rent without his consent. The tenant stated that she withheld \$100.00 from the November rent for compensation for receiving the unit dirty and \$380.00 from January's rent for repairing the patio door.

In the tenants own testimony she acknowledged that she did not have the permission of the landlord to withhold rent or an order from the Branch.

Section 26 of the *Act* addresses this issue as follows:

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

Based on the above, I find that the landlord is entitled to \$480.00.

2. Late fees - \$150.00.

The landlord was seeking a late fee of \$25.00 x 6 months that the tenant was late in paying the rent. The landlord stated that he acknowledged that there is no condition to address late fees in their tenancy agreement.

As this was not a condition of the tenancy agreement and that the tenant was never advised of this clause, I dismiss this portion of the landlords' application.

3. Strata fine \$50.00

The landlord stated that the strata fined him because the tenant or her guest was observed drinking alcohol in a common area.

The tenant did not dispute this claim. As the tenant has accepted responsibility for this, I find that the landlord is entitled to \$50.00.

4. Move in Move out Fee - \$200.00.

The landlord stated that the strata fined him \$200.00 as the tenant did not pay the move in move out fee as per strata bylaws. The landlord stated that "I think" I had her sign the Form K bylaws and later stated, "I'm pretty sure I have it somewhere".

The tenant disputes this claim. The tenant stated that she was did not sign a "Form K" document or that she was advised of the move in and move out fees.

I find that the landlord did not provide sufficient evidence to support this claim and I therefore dismiss this portion of his application.

As neither party has been completely successful in their applications, I decline to make a finding in regards to the filing fee and each party must bear that cost.

Conclusion

The landlord has established a claim for \$530.00. I order that the landlord retain \$530.00 from the security deposit in full satisfaction of the claim. The remaining \$320.00 of the security deposit is to be returned to the tenant. I grant the tenant an order under section 67 for the balance due of \$320.00. This order may be filed in the Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 08, 2015

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Residential Tenancy Branch

