



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      MND, MNR, MNDC, MNSD, FF

### Introduction

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

- 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;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing by conference call and gave testimony. The tenant confirmed receipt of the landlord's notice of hearing package and the submitted documentary evidence. The tenant did not submit any documentary evidence. Based upon the testimony of both parties, I am satisfied that both parties have been properly served with the landlord's notice of hearing package and the submitted documentary evidence as per section 88 and 89 of the Act.

At the outset of the hearing it was clarified with both parties that the landlord had incorrectly named the tenant as M.F.T. instead of T.M.F. As both parties confirmed that this was correct and neither party objected to the amendment, the landlord's application was amended to properly reflect the tenant's proper name as T.M.F.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for unpaid rent or utilities and for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

Both parties confirmed that there was a signed tenancy agreement, but that neither party felt it necessary to submit a copy. No condition inspection reports for the move-in or the move-out were completed by the landlord.

The landlord seeks a monetary claim of \$3,175.00 consisting of:

\$1,575.00 for garbage and furniture disposal  
\$1,600.00 in lost rental income for May 2015

The landlord stated that the tenant was served with an order of possession that was to be effective on April 22, 2015. The landlord stated that the tenant overheld the rental unit until May 18, 2015 when the landlord's son-in law discovered that the rental unit was vacant and the door unlocked. The landlord stated that the rental premises required extensive cleaning costing \$1,575.00 as shown by the submitted photographs. The landlord also stated that as the tenant's overheld the rental premises until May 18, 2015, the landlord seeks compensation of lost rental income of \$1,600.00 for the entire month of May 2015 because he was unable to re-rent the rental premises until all of the cleanup was finished.

The landlord also seeks to be able to retain the \$800.00 security deposit to offset against the landlord's monetary claim.

The landlord has submitted a copy of a paid invoice from a construction company dated May 19, 2015 for \$1,575.00 for "clean up of...Dumping and labour". The landlord also relies on 12 submitted photographs of the rental premises which show miscellaneous items strewn about the rental premises (inside and outside) including garbage, desks, printers, dirty and stained carpet on the stairway, a hole in the wall, multiple liquid containers in garage, poker table, boxes of shredded paper, ashes piled up outside the fireplace, a push lawn cutter, washbasin, tires, dishwasher and a toilet.

The tenant disputed the claim of the landlord stating that he complied with the order of possession which was posted on the rental unit door on April 22, 2015 and that he had vacated the rental unit at the end of April 2015. The tenant stated that the rental premises were left as shown in the landlord's submitted photographs due to an ongoing mold issue that required extensive cleaning. The tenant stated that the landlord prevented the tenant from completing the clean-up work. The tenant stated that the landlord was informed of mold issues since the beginning of the tenancy, but did nothing. The tenant also stated that the landlord was notified of mold issues throughout the tenancy. The tenant's witness, P.N. was retained by the tenant to clean up the mold at the end of the tenancy as a mold removal specialist. The witness, P.N. provided testimony that he is a mold removal specialist hired by the tenant to remove mold from the tenant's personal effects. P.N. stated that the source of the mold was from a leak in the garage and that masks were required for the treatment of the tenant's belongings. The tenant stated that he has documentary proof that the landlord was notified of the mold issue at the end of the tenancy, but did not provide any for the hearing.

The landlord disputed the tenant's claim that he was never notified of any mold issues during this tenancy. He maintained that the first he heard of this mold problem was at this hearing.

The landlord also stated that the tenant's mold removal specialist is not known to him nor has he ever met him.

The witness, P.N. stated that he had previously worked with the landlord and that they were known to each other. The landlord stated that the witness, P.N. might be known to him, but that he could not recall P.N.

### 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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Section 37(2) of the *Act* specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear.

I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. In this case, both parties have confirmed that the landlord properly served the tenant with an order of possession on April 22, 2015 for unpaid rent. The landlord gave affirmed testimony that the tenant failed to provide any notice to end the tenancy or that the tenant also failed to return any keys to the landlord. The tenant has failed to provide sufficient evidence of any issues of mold prior to the landlord's application for dispute resolution. I refer to the landlord's 12 photographs which clearly show that the rental unit was left in disarray requiring cleaning and the disposal of the tenant's personal belongings. The photographs show no evidence of mold issues as per the tenant's statements or the witness, P.N.'s statement which was disputed by the landlord. The tenant confirmed in his direct testimony that the rental was left in this manner as shown by the submitted photographs. I find that the tenant left the rental unit at the end of tenancy which required the landlord to have extensive cleaning and removal of garbage that impacted the landlord's ability to re-rent the unit in a timely manner to mitigate any possible losses in rental income. The landlord also submitted an undisputed copy of a paid invoice dated May 19, 2015 for "cleanup of...Dumping and Labour." The photographs clearly show that an extensive amount of cleaning and garbage removal was required to make the premises re-rentable. On this basis, I find that the landlord has established a claim for the monetary amount requested of \$3,175.00 for the clean-up charges and the loss of rental income as he was unable to re-rent until the rental property was cleaned up and made habitable.

The landlord applied to keep the tenant's \$800.00 security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,175.00 under the following terms:

Item	Amount
Cleanup/Garbage Removal	\$1,575.00
Loss of Rental Income May 2015	\$1,600.00
Offset Security Deposit	-800.00
Recover Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$2,425.00</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 orders 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: November 05, 2015

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Residential Tenancy Branch

