



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Code OPB, MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the "Act"), for an order of possession, for a monetary order for unpaid rent, for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

The landlord's agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on September 30, 2015, a Canada post tracking number was provided as evidence of service. The agent stated that the package was successfully delivered.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord's agent appeared gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on May 1, 2015. Rent in the amount of \$400.00 was payable on the 1<sup>st</sup> and 15<sup>th</sup> of each month. The tenant paid a security deposit of \$400.00. The tenancy ended on

September 30, 2015, by mutual agreement. Filed in evidence are a copy of the tenancy agreement and a copy of the mutual agreement to end tenancy.

The landlord claims as follows:

a.	Unpaid rent from July 15 2015 to September 15, 2015	\$2,000.00
b.	Loss of revenue	\$1,600.00
c.	Cleaning	\$ 250.00
d.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$3,900.00</b>

#### Unpaid rent

The landlord's agent testified that the tenant failed to pay rent that was due on July 15, 2015, August 1, 2015, August 15, 2015, September 1, 2015 and September 15, 2015. The landlord seeks to recover unpaid rent in the amount of \$2,000.00.

#### Loss of revenue

The landlord's agent testified that the tenant left the rental unit dirty and due to the condition they were unable to rent it for the month of October 2015. The agent stated that a new renter was found in November 2015, however, is uncertain on the date the new renter took possession.

#### Cleaning

The landlord's agent testified that they hired a cleaner to clean the rental unit as it was left filthy by the tenant and the entire unit needed to be cleaned. The agent stated that the cleaner was there for two days. The agent stated that in addition to the hired cleaner they alongside with the landlord spent two days cleaning the rental unit. Filed in evidence is a receipt for cleaning.

#### Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim. Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

As the tenant vacated the premises on September 30, 2015, and the landlord has possession of the rental unit. I find it not necessary for me to consider the landlord's application for an order of possession.

### Unpaid rent

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

#### **Rules about payment and non-payment of rent**

**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.*

...

I accept the landlord's agent undisputed testimony that the tenant did not pay rent owed for July 15, 2015, August 1, 2015, August 15, 2015, September 1, 2015, and September 15, 2015. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$2,000.00**.

### Loss of revenue

A tenant is not liable to pay rent after a tenancy agreement has ended, such as in this case as the parties mutually agreed to end the tenancy on September 30, 2015. However, even when a tenancy has legally ended in accordance the Act, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent.

In this case, the landlord's agent testified that due to the dirty condition the tenant left the rental unit, they were unable to rent it for the month of October, 2015; however, no photographs of the rental unit were submitted as evidence for my review or consideration.

Further, no move-out condition inspection was submitted as evidence, as to the agreed upon condition of the rental unit at the end of the tenancy. I find the landlord has failed to provide sufficient evidence to support this portion of their claim. Therefore, I dismiss the landlord's claim for loss of revenue due to insufficient evidence.

### Cleaning

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

**37** (2) *When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, the landlord's agent testified that the tenant did not clean the rental unit at the end of the tenancy. However, no photographs of the rental unit were submitted as evidence

for my review or consideration. As a result, I am unable to determine if the tenant failed to leave the rental unit reasonable clean as required by section 37 of the Act. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence.

I find that the landlord has established a total monetary claim of **\$2,050.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$400.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,650.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant

#### Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 26, 2015

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Residential Tenancy Branch

