



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MND, MNR, MNSD, 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 damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit and pet damage deposit (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1448 in order to enable the tenants to connect with this teleconference hearing scheduled for 1430. 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 the landlord served the tenants by registered mail to the forwarding address provided by the tenants when they vacated the rental unit. The landlord provided me with Canada Post tracking numbers that showed the same. On the basis of this evidence, I am satisfied that the tenants were deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

### 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 tenants' deposits in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

### 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 4 July 2014. On 3 July 2014, the parties entered into a tenancy agreement for a period ending 30 June 2015. Monthly rent in the amount of \$1,950.00 was due on the first. The landlord continues to hold the tenants' deposits totaling \$1,950.00. The deposits were collected at the beginning of this tenancy. The tenancy ended 31 May 2015. The agent testified that the tenants did not pay rent for May 2015.

There was an addendum to the tenancy agreement. Clause 14 of the addendum sets out that the tenant will be charged a fee of \$25.00 for late payments. There was also a pet addendum in relation to the tenants' dog.

Condition inspection reports were created at the beginning and end of tenancy. The tenants did not participate in the condition move out inspection. The condition move out inspection notes that the rental unit generally was dirty, the carpets were dirty, that an additional light cover was missing, and that there was scuff marks on the walls.

The agent testified that the carpets were professionally cleaned on move in, but were not cleaned by the tenants at the end of tenancy. The agent testified that the landlord incurred costs of \$150.00 for the professional carpet cleaning.

The landlord provided a general document titled "Statement" that itemises the various costs incurred by the landlord; however, there are no details provided other than the general descriptions and costs. The landlord has not provided photographs of the condition of the rental unit or the damage alleged.

The landlord claims for \$2,766.25:

<b>Item</b>	<b>Amount</b>
May Rent and Late Fee	\$1,970.00
Carpet Cleaning	150.00
Cleaning and Garbage Removal	341.25
Drywall Repair	200.00
Light Fixture	100.00
<b>Total Monetary Order Sought</b>	<b>\$2,766.25</b>

## Analysis

The landlord claims for May's unpaid rent.

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.

On the basis of the sworn and uncontested evidence of the agent, I find that the tenants did not pay rent for May when it was due 1 May 2015. I find that the landlord has proven its entitlement to the rent amount.

The landlord claims for a late fee in respect of May's rent.

Paragraph 7(1)(d) of the *Residential Tenancy Regulations* (the Regulations) provides that a landlord may charge an administration fee of \$25.00 for late payment of rent. Pursuant to subsection 7(2) a late fee charge may only be applied if the tenancy agreement provides for that fee.

The tenancy agreement provides for this fee at clause 14 of the addendum. I find that the landlord is entitled to charge the fee. I find that the tenants have paid rent late for May. The landlord is entitled to recover \$25.00 as a fee for the tenants' late payment.

The landlord claims for the cost of professional carpet cleaning.

Subsection 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. *Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" (Guideline 1) states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. ...

Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. ...

The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

The tenants had a dog in the rental unit that was not caged. The condition move out inspection notes that the carpets were dirty. I find that, in order to meet their obligation pursuant to subsection 37(2) of the Act and Guideline 1, the tenants were required to professionally clean the carpets at the end of the tenancy. By failing to clean the carpets the tenants breached the Act and caused the landlord a loss.

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.

On the basis of the sworn and uncontested testimony of the agent, I find that the landlord has substantiated a loss of \$150.00 as a result of the tenants' breach. I find that the landlord has established an entitlement to this amount.

The landlord seeks compensation for cleaning and repair of various items. The landlord has not provided me with photographs of the alleged damage and has not provided me with any receipts that would show the cost of repair or remediation. Further, the landlord did not provide any evidence as to the age of the items that required repair. Without these I am unable both to determine whether the tenants have breached the Act and what, if any, loss resulted from the breach. I find that the landlord has failed to substantiate this portion of its claim.

As the landlord has been successful, I find that it is entitled to recover its filing fee from the tenants.

Pursuant to paragraph 72(2)(b), the landlord may withhold the tenants' deposits in partial satisfaction of the monetary order.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$225.00 under the following terms:

<b>Item</b>	<b>Amount</b>
May Rent	\$1,950.00
May Late Rent Payment	25.00
Carpet Cleaning	150.00
Recover Filing Fee	50.00
Offset Deposits	-1,950.00
<b>Total Monetary Order</b>	<b>\$225.00</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 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: December 09, 2015

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Residential Tenancy Branch

