



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord) filed under the Residential Tenancy Act (the "Act"), for a monetary order for compensation under the Act, and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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 monetary compensation for money owed?

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

### Background and Evidence

The landlord claims as follows:

a.	Bailiff fees	\$2,471.84
b.	Supreme court fees	\$ 120.00
c.	Replace patio door	\$1,200.00
d.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$3,841.84</b>

The landlord's agent testified that the tenant did not comply with an order of possession. The agent stated that the landlord had to obtain a writ of possession in Supreme Court and then they had to have the Bailiff remove the tenant. The landlord seeks to recover

court fees and bailiff fees in the total amount of \$2,591.84. Filed in evidence are receipts.

The landlord's agent testified that the tenant broke the patio door, although there is a receipt filed in evidence, they have no further details.

The tenant testified that they paid the bailiff fees to the landlord's agent office in August 2015, in cash. The tenant indicated they have a witness that was unavailable to appear today due to work. The tenant stated the landlord did not give a receipt.

The tenant testified that the patio door was not broken when they left.

The agent testified that the last payment made by the tenant was in May 2015, which was applied to the outstanding rent arrears of \$41,800.00. The agent stated that every payment that has been made by the tenant, has been paid by money order or bank draft, as there office does not accept cash payments.

### 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.

In this case, the tenant breached the Act, when they failed to comply with an order of possession. In order to enforce the order the landlord must obtain a writ of possession from the Supreme Court to enforce the order.

The landlord incurred cost of \$120.00 to obtain the writ of possession and the bailiff enforced the order charging fees of \$2,471.84. I find the landlord is entitled to recover the cost to enforce the order of possession, in the amount total amount of **\$\$2,591.84.**

While the evidence of the tenant was that they paid to the agent the bailiff fees of \$2,500.00, I find that highly unlikely, and is not supported by any evidence such a bank statements showing the money was withdraw. I also find it highly unlikely that the

landlord's agent, which is a profession eviction services, would accept cash and not give a receipt as claimed..

The landlord is further claiming for a broken patio door, I find the landlord has provided insufficient evidence that the damage was caused by the tenant. No move-in condition inspection report was submitted as evidence nor were there any photographs to show the damage at the end of the tenancy. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$2,641.84** comprised of the above described amount and the \$50.00 fee paid for this application.

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.

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: December 16, 2015

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Residential Tenancy Branch

