



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

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

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- 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; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 72 minutes in order to allow both parties, particularly the landlord, to fully present their submissions and to negotiate a settlement of this claim.

This matter was previously heard by a different Arbitrator on September 29, 2015 and a decision was made on the same date. The tenants applied for a review of that decision and a new hearing was granted by another Arbitrator, pursuant to a review consideration decision, dated November 6, 2015. The tenants were required to serve the landlord with a copy of the review consideration decision. Once the decision was served upon the landlord, the landlord was required to serve a copy of her original application and evidence upon the tenants. Both parties were also required to serve the other party with any other evidence they intended to rely upon at this hearing.

The landlord confirmed receipt of the review consideration decision and the tenants' written evidence, including for the review application. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the review consideration decision and the tenants' written evidence package.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's Application.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the rental unit?

Is the landlord entitled to retain the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this Application from the landlord?

### Background and Evidence

Both parties agreed that this tenancy began on August 28, 2014 and ended on May 23, 2015, when the tenants returned the keys for the rental unit. Monthly rent in the amount of \$2,650.00 was payable on the first day of each month. Both parties agreed that a security deposit of \$1,325.00 was paid by the tenants and the landlord continues to retain this deposit. A copy of the written tenancy agreement was provided for this hearing.

Both parties agreed that a move-in condition inspection report was completed. The landlord stated that she completed a move-out inspection without the tenants present. Both parties agreed that the tenants provided a forwarding address by way of an email to the landlord on May 19, 2015. The tenants claimed that they did not provide written permission to the landlord to deduct any amount from their security deposit, while the landlord could not recall whether written permission was given. The landlord filed her application on June 2, 2015.

In her Application, the landlord sought \$1,325.00 for unpaid May 2015 rent, \$155.00 for extra rent charges, \$157.50 for failure to return keys, \$245.00 for cleaning and \$1,417.50 for patching and painting walls and replacing a baseboard heater. The landlord also sought to recover the \$50.00 filing fee paid for her Application.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings,

the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues with respect to this entire tenancy:

1. Both parties agreed that the landlord will retain the tenants' entire security deposit of \$1,325.00;
2. The landlord agreed to bear the cost of the \$50.00 filing fee paid for her application;
3. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the landlord's application at this hearing and any issues arising out of this tenancy; and
4. Both parties agreed that they will not initiate any further claims or applications against each other at the Residential Tenancy Branch, with respect to any issues arising out of this tenancy.

These particulars comprise a full and final settlement of all aspects of this dispute and arising out of this tenancy. Both parties testified at the hearing that they understood and agreed to the above settlement terms, free of any duress or coercion. Both parties testified that they understood that the settlement terms are legal, final, binding and enforceable, settling all aspects of this dispute and arising out of this tenancy.

The landlord confirmed under oath, a number of times, that she voluntarily agreed to this settlement agreement and that she understood it was final and binding. The landlord was also notified that this settlement agreement did not involve or bind the purchaser of the rental unit, who purchased the unit on June 1, 2015, with respect to any damages at the rental unit.

### Conclusion

To give effect to the settlement reached between the parties, I order the landlord to retain the tenants' entire security deposit of \$1,325.00.

The landlord must bear the cost of the \$50.00 filing fee paid for her application.

The decision and monetary order from the previous hearing on September 29, 2015, are overturned by this decision. The monetary order, dated September 29, 2015, in the amount of \$2,950.00, given to the landlord against the tenants, is cancelled and of no

force or effect. Both parties were informed of this during the hearing and agreed to this term.

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: January 12, 2016

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Residential Tenancy Branch

