



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the unit; unpaid rent or utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that the hearing documents were sent to the tenant on September 13, 2015 at his forwarding address. The landlord provided the registered mail receipt, including tracking number, as proof of service. The registered mail was returned as it was "refused by recipient". Section 90 of the Act provides that documents are deemed to be received five days after mailing, even if the recipient refuses to accept or pick up their mail. Based upon the evidence before me, I found the tenant deemed to be served with the hearing documents five days after mailing and I continued to hear from the landlord without the tenant present.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to recover the amounts claimed against the tenant?
2. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The tenancy commenced September 30, 2014 on a month to month basis. The tenant was required to pay a security deposit of \$625.00 and was required to pay rent of \$1,250.00 on the first day of every month.

The cheque for the security deposit was returned, as were the rent cheques for October and November 2015. The landlord's bank declined to accept the tenant's rent cheque for December 2015 given the three previous returned cheques. The tenant did not replace the returned cheques with another form of payment.

On December 18, 2015 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit with a stated effective date of December 31, 2015. The tenant did not pay the outstanding rent but did vacate the rental unit. The landlord was able to re-rent the unit starting February 1, 2016.

The landlord seeks to recover the unpaid and/or loss of rent in the amount of \$5,000.00 for the months of October 2015 through January 2016.

In addition, the landlord seeks to recover \$18.95 to patch holes apparently created by installation of a TV mount and re-installation of a closet shelf that was found lying on the floor of the closet. This amount is based on the pro-rated bill of a handyman service the landlord enlisted to make repairs.

The landlord also seeks to recover \$159.00 for cleaning the rental unit; disposing of abandoned property or garbage, and painting over black streaks on the walls and the wall patches. This amount is based on the landlord's time at \$20.00 per hour.

The landlord withdrew her request to recover a bank service charge from the tenant.

Documentary evidence provided for consideration included copies of: the tenancy agreement; the 10 Day Notice; notices regarding the returned cheques; condition inspection report; an invoice for wall repairs; and, a written submission of the landlord.

### Analysis

Upon consideration of the unopposed evidence before me, I provide the following findings and reasons.

Under section 26 of the Act, a tenant is required to pay rent pursuant to their tenancy agreement. I have reviewed the tenancy agreement, the evidence concerning the bounced cheques, and the 10 Day Notice. I am satisfied the tenant failed to pay the rent due to the landlord under the tenancy agreement for the months of October 2015 through December 2015. Therefore, I award the landlord unpaid rent in the sum of \$3,750.00.

With respect to the loss of rent for January 2016 I further find the landlord entitled to recover that loss from the tenant. Although the tenant vacated by the effective date of the 10 Day Notice, I find that the vacancy for January 2016 and associated loss to the landlord is due to the tenant's failure to pay rent or give the landlord proper notice to end tenancy. So as to end the tenancy and avoid liability for January 2016 rent the tenant would have had to give the landlord written notice to end tenancy prior to December 1, 2015 under section 45 of the Act which he did not do. Accordingly, I find this tenancy came to an end due to the tenant's breach of the tenancy agreement and the Act. I also accept that the landlord suffered a loss of rent in the sum of \$1,250.00 for the month of January 2016 due to the tenant's breach. Therefore, I grant the landlord's request to recover loss of rent from the tenant for the month of January 2016.

Under section 37 of the Act a tenant is required to leave a rental unit reasonably clean and undamaged. I accept the unopposed evidence before me that the tenant did not leave the rental unit sufficiently clean and there were some minor damages that required repair. I further

find the amounts requested by the landlord to be reasonable. Therefore, I grant the landlord's request to recover \$18.95 and \$159.00 for these losses, as requested.

Since the landlord was largely successful in this application, I award the landlord recovery of the \$50.00 filing fee paid for this application.

Since the tenant's security deposit cheque was returned, the landlord is not holding a security deposit and I find it unnecessary to further consider the landlord's request to retain the security deposit. Nor, are the amounts awarded to the landlord offset by any security deposit.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid Rent: October 2015 – December 2015	\$3,750.00
Loss of Rent: January 2016	1,250.00
Wall repairs	18.95
Cleaning, garbage disposal, painting	159.00
Filing fee	<u>50.00</u>
Monetary Order	\$5,227.95

### Conclusion

The landlord has been provided a Monetary Order in the sum of \$5,227.95 to serve and enforce upon the tenant.

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: March 24, 2016

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Residential Tenancy Branch