



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, 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, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

The tenants admitted service of the landlord's dispute resolution package including all evidence before me. The tenants received the dispute resolution package in late November 2015.

### Disposition of Landlord's Application

While the respondents attended the hearing by way of conference call, the applicant did not, although I waited until 1341 in order to enable the applicant to connect with this teleconference hearing scheduled for 1330.

Rules 7.1, 7.3, and 7.4 of the Rules of Procedure establish the consequences of failing to appear at a hearing at the scheduled time:

#### **7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the landlord and in the absence of the landlord's participation in this hearing, I order the application dismissed without leave to reapply.

### **Return of Deposits**

The tenant RC testified that the landlord continues to hold the tenants' security deposit and pet damage deposit (the deposits) totalling \$750.00, which were collected 25 June 2013.

On 17 November 2015 the landlord's agent wrote to the tenant WC by email to request the tenants forwarding address. The tenant WC replied to the agent's request and provided the tenants' forwarding address. This is the address the landlord used to serve the tenants with the dispute resolution package.

Paragraph 71(2)(c) allows me to order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act. In this case, the agent specifically used email to request the tenants' forwarding address. The tenant WC replied by email. The landlord used this address as the tenants' address for service in this application. It is clear that the landlord had this address in its possession. I find, pursuant to paragraph 71(2)(b), that the landlord received the tenants' forwarding address on 17 November 2015, the date the address sent by email. As the landlord had actual notice of the tenants' forwarding address, I order that the tenants' forwarding address was sufficiently delivered for the purposes of this Act.

*Residential Tenancy Policy Guideline*, “17. Security Deposit and Set off” provides guidance in this situation:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
  - a landlord’s application to retain all or part of the security deposit, or
  - a tenant’s application for the return of the depositunless the tenant’s right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

There is no evidence before me that indicates that the tenants’ right to the deposits has been extinguished. As there is a balance in the amount of \$750.00, I order that the balance of the tenants’ deposits shall be returned to the tenants forthwith.

### Conclusion

The landlord’s application is dismissed without leave to reapply.

I issue a monetary order in the tenants’ favour in the amount of \$750.00 under the following terms:

Item	Amount
Return of Security Deposit	\$375.00
Return of Pet Damage Deposit	375.00
<b>Total Monetary Order</b>	<b>\$750.00</b>

Should the landlord(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: June 27, 2016

---

Residential Tenancy Branch