



# 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 was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on November 13, 2015. The Landlord filed seeking a \$1,427.40 Monetary Order for: damages to the unit, site or property; unpaid rent; money owed or compensation for damage or loss under the *Act*, Regulation, or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee.

On May 15, 2016 the Landlord filed an amendment to their application reducing their monetary claim to \$1,154.33 plus the filing fee.

The hearing was conducted via teleconference and was attended by an Agent for the Landlord (the Landlord). No one was in attendance at the hearing on behalf of the Tenant. The Landlord provided affirmed testimony that the Tenant was served notice of this application and this hearing by registered mail November 17, 2015. The amended application was served to the Tenant via registered mail on May 16, 2016. Canada Post tracking receipts were submitted by the Landlord.

Section 89(1) of the *Act* stipulates that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to a landlord, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

Section 90(a) of the *Residential Tenancy Act* (the “*Act*”) states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail.

Based on the undisputed evidence of the Landlord, I find the Tenant was sufficiently served notice of this application and hearing and is deemed to have received that notice

on November 22, 2016, 5 days after it was mailed, in accordance with Sections 89(1) (c) and 90 of the *Act*. The Tenant is also deemed to have received a copy of the amended application on May 21, 2016. Accordingly, the hearing continued to hear the undisputed evidence of the Landlord in absence of the Tenant.

### Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

### Background and Evidence

The Landlord submitted evidence that the Tenant and a co-tenant entered into a month to month written tenancy agreement that began on July 1, 2013. Rent of \$750.00 was payable on or before the first of each month. On June 7, 2013 the Tenant(s) paid \$375.00 as the security deposit. On September 30, 2014 the parties amended the tenancy agreement to remove the co-tenant. All other terms of the tenancy agreement remained the same.

On September 30, 2015 the Tenant served the Landlord with notice to end his tenancy effective October 31, 2015. That notice to end tenancy included the Tenant's forwarding address.

A move in condition inspection report was completed in the presence of a Landlord and a Tenant on June 28, 2013. The Landlord submitted the Tenant agreed to conduct the move out inspection and condition report on October 31, 2015 at 12:30 p.m. However, when the Landlord attended the rental unit the Tenant was not present. The Landlord returned on November 4, 2015 to conduct the inspection in the absence of the Tenant.

The Landlord submitted evidence in support of their monetary claim, which included in part: the condition inspection report form; receipts for amounts claimed for cleaning and repairs; and a Monetary Order Worksheet. The Landlord's claim of \$1,154.33 was comprised of: \$525.00 for 15 hours of cleaning at \$35.00 per hour; \$357.50 for refuse removal; \$110.00 to remove and rehang a new door; \$31.21 for hardware materials; \$85.12 for locksmith fees; \$45.50 for four dumping fees.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

**Section 7** of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

Although the Landlord sought payment for unpaid rent or utilities on their application for Dispute Resolution, no evidence was submitted relating to unpaid rent or utilities. Accordingly, the request for unpaid rent or utilities is dismissed.

I accept the Landlord's undisputed evidence that the Tenant left the rental unit requiring additional cleaning and repairs. Therefore, I find the Tenant breached section 37 of the Act. In addition, I find the Tenant's breach caused the Landlord to suffer a loss of \$1,154.33 for cleaning and repairs as outlined above. Accordingly, I grant the undisputed application for cleaning and repairs in the amount of **\$1,154.33**.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$375.00 security deposit since June 7, 2013.

I find this monetary award meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit plus interest as follows:

Cleaning and Repairs	\$1,154.33
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$1,204.33
<b>LESS: Security Deposit \$375.00 + Interest \$0.00</b>	<u>-375.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 829.33</u></b>

The Tenant is hereby ordered to pay the Landlord the offset amount of \$829.33, forthwith.

In the event the Tenant does not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **\$829.33** which may be enforced through Small Claims Court after service upon the Tenant.

Conclusion

The Landlord has succeeded with their application and was awarded monetary compensation of \$1,204.33 which was offset against the Tenant's security deposit leaving a balance owed to the Landlord of **\$829.33**.

This decision is final, legally binding, and 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: June 15, 2016

---

Residential Tenancy Branch