



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ADVANCED PROPERTY MANAGEMENT INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND MNR MNSD FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on December 16, 2015. The Landlord filed seeking a Monetary Order for: unpaid rent; damages to the unit, site or property; to keep the security deposit; and to recover the cost of 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 December 17, 2015. Canada Post tracking receipts were submitted in the Landlord's documentary evidence which indicated the registered mail was signed received on December 21, 2015.

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;

Based on the undisputed evidence of the Landlord, I find the Tenant was sufficiently served notice of this application and hearing, in accordance with Section 89(1) (c) of the *Act*. 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 entered into a fixed term written tenancy agreement that began on April 17, 2015 and was not set to end until May 31, 2016. Rent of \$1,225.00 was payable on or before the first of each month. On April 17, 2015 the Tenant paid \$612.50 as the security deposit. A move in condition inspection report was completed in the presence of a Landlord and a Tenant on April 16, 2015.

On November 2, 2015 the Landlord received an email from the Tenant which indicated the Tenant would be ending her tenancy early, effective at the end of November 2015. The Landlord submitted evidence they served the Tenant notice of the final inspection which was initially scheduled for November 30, 2015. When the Tenant did not appear for that scheduled inspection the Landlord entered the unit and found it had been left in an unclean state and scattered with the Tenant's possessions. A notice of final inspection was posted to the Tenant's door and was scheduled for December 3, 2015. The Tenant did not appear at the final inspection and it was completed in absence of the Tenant.

The Landlord testified they mitigated their potential loss and re-rented the unit effective December 1, 2015. However, due to the state the rental unit had been left in, (dirty and with some damage) and due to the fact that no keys were returned by the Tenant; their new Tenant could not take possession until December 4, 2015. As a result they are now seeking \$1,346.85 monetary compensation comprised of the following, as supported by their documentary evidence: \$241.50 carpet cleaning; \$862.86 cleaning and damage repairs; \$135.82 re-keying of the rental unit and mailbox; \$81.67 over holding charges (3 days x \$27.22 per day); and \$25.00 late payment fee, as provided for by the tenancy agreement, regarding November 1, 2015 rent that was not paid until November 9, 2015.

### 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

Under section 26 of the Act, a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this Act. A tenant is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Section 7 of the Regulations stipulates that a landlord may charge a tenant a non-refundable fee for late payments providing that the tenancy agreement provides for that fee. The tenancy agreement provided for \$25.00 late payment fees in accordance with section 7 of the Regulations.

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.

I accept the Landlord's undisputed evidence the Tenant failed to pay their November 1, 2015 rent on time and the Tenant vacated the rental unit leaving the unit requiring cleaning, repairs, and without returning the keys, in breach of sections 26 and 37 of *the Act*. Accordingly, I grant the Landlord's claim in the amount of **\$1,346.85**.

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 \$612.00 security deposit since April 17, 2015.

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:

Monetary award	\$1,346.85
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$1,396.85
<b>LESS:</b> Security Deposit \$612.00 + Interest \$0.00	<u>-612.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 784.85</u></b>

The Tenant is hereby ordered to pay the Landlord the offset amount of \$784.85, 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 **\$784.85** which may be enforced through Small Claims Court upon service to the Tenant.

### Conclusion

The Landlord has succeeded with their application and was awarded monetary compensation of \$1,396.85. The monetary award was offset against the Tenant's security deposit leaving a balance owed to the Landlord of **\$784.85**.

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: July 20, 2016

---

Residential Tenancy Branch