



# Dispute Resolution Services

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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 rental unit; unpaid rent; 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 provided evidence that the hearing package was sent to the tenant via registered mail. The first attempt to send the hearing package was done April 8, 2016; however, that package was returned as the address was written incorrectly. Upon return of the registered mail the landlord re-sent the hearing package to the correct address on April 15, 2016. That package was returned to the landlord as it was unclaimed by the tenant.

The landlord provided copies of the registered mail envelopes, including tracking numbers as proof of service. As for the address used for service, the landlord testified that the tenant sent her a forwarding address via text message or email but the landlord could not recall specifically during the hearing. The landlord was given some time during the hearing to check her emails but could not quickly locate the information. I ordered the landlord to provide me with a copy of the email or text message by August 22, 2016, which she did. The landlord provided a copy of an email received from the tenant at 2:56 p.m. on March 29, 2016 that provided for the tenant's forwarding address and that email was also sent to the landlord using a different email address at 3:01 p.m. on that same date.

Upon review of the emails and the registered mail envelope sent to the tenant on April 15, 2016 I am satisfied the landlord sent the hearing package to the tenant via registered mail using the forwarding address provided by the tenant. As provided under section 90 of the Act, a person is deemed to have received documents five days after mailing even if the party refuses to accept or pick up their mail. Accordingly, I deemed the tenant to have received the landlord's hearing package on April 20, 2016. Given the date of this hearing, I was satisfied that the tenant was not unduly prejudiced by the few days delay in sending the package to her correct address. Therefore, I proceed to

consider the landlord's claims against the tenant even though the tenant did not appear at the hearing.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant in the amounts claimed?
2. Is the landlord authorized to retain all or part of the security deposit?

Background and Evidence

The tenancy commenced on December 15, 2015 and the tenant paid a security deposit of \$412.50. The tenant was required to pay rent of \$825.00 per month on the first day of every month. The tenancy agreement provides that the tenancy was to be a fixed term of three months but the expiry date was recorded as being March 31, 2016. The tenancy agreement indicates that at the expiration of the fixed term the tenancy would continue on a month to month or another fixed term.

The landlord testified that that in January 2016 she sent the tenant a letter informing the tenant that the tenant would have to move out by the end of the fixed term because the house was for sale. An email was included in the landlord's evidence package dated January 22, 2016. The email informs the tenant to move out by the end of the fixed term of March 31, 2016 but the email does not include a reason for ending the tenancy. Nor, did the landlord did not give the tenant a proper notice to end tenancy in the approved form.

On March 1, 2016 the tenant left a rent cheque for the landlord in the amount of \$412.50. The landlord texted the tenant on March 1, 2016 to ask if the tenant was moving out on the 15<sup>th</sup> since the rent cheque was for only one-half of the monthly rent. The landlord also asked whether she should rearrange the carpet cleaners. The next message the landlord sent was to say that she would advertise the suite for the 15<sup>th</sup> and that she would return the "damage deposit" to the tenant once the suite is left clean. The tenant responded with a message "yes".

On March 15, 2016 the landlord inspected the unit and gave the tenant a cheque for \$200.00 as a partial refund of the security deposit. The landlord explained that she gave the tenant a partial refund in good faith hoping red dye stains would come out of the carpet. The landlord then put a stop payment on the cheque on March 18, 2016.

The landlord testified that there was a contract for purchase and sale of the house as of mid-May 2016 and ownership transferred on June 29, 2016. The landlord did not attempt to re-rent the rental unit while it was for sale.

The landlord seeks to recover the following amounts from the tenant:

**Unpaid rent for March 2016 -- \$412.50**

The landlord submitted that the tenant gave her short notice to end the tenancy and failed to fulfil the fixed term agreement. On at least two occasions during the hearing, the landlord said the fixed term was for three months, which is also the length of time recorded on the tenancy agreement. When I pointed out that three months would bring the expiry date to March 15, 2016 since the tenancy started December 15, 2015 the landlord stated that part of the tenancy agreement was in error and that the end of the fixed term was to be March 31, 2016.

I noted that the landlord did not appear to take issue with the tenant ending the tenancy March 15, 2016 based upon the text messages exchanged between the two on March 1, 2016. The landlord explained that she was trying to “work with the tenant” at that time and decided to pursue the tenant for unpaid rent at a later date when the two were in dispute over the condition of the property and the landlord’s decision not to refund all of the security deposit.

**Bank fee -- \$15.00**

The landlord indicated she was seeking recovery of fees due to a bounced cheque. The landlord provided a copy of a bounced cheque for January 2016 rent; however, the bank receipt provided as evidence indicates the landlord was charged \$15.00 for putting a stop payment on the cheque the landlord wrote for a partial refund of the security deposit.

**Light fixture repair and light bulbs --\$150.00**

The landlord submitted that the light fixture was loose at the end of the tenancy which the landlord attributed to the tenant or her child pulling on it, and that the light fixture had to be replaced along with the purchase new bulbs.

In the details of dispute provided on the landlord’s application I note that the landlord makes no mention of a loose or broken light fixture; but, only that there were “light bulbs out”.

The receipt provided as evidence is for a total of \$137.01 and has a date of March 22, 2012.

**Carpet replacement -- \$1,526.20**

The landlord had submitted with her application that the tenant damaged the carpeting and the landlord obtained estimates to replace the carpeting in certain rooms; however, during the hearing the landlord stated that the new owners did not have an issue with the condition of the carpeting and the landlord did not incur any losses as a result of the stains. The landlord withdrew this claim.

**Reinstall door handle -- \$20.00**

The landlord submitted that the tenant had removed a door knob from the bathroom door and did not reinstall it before she vacated. The landlord claims to have paid her brother \$20.00 to reinstall the door knob.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

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

**Unpaid Rent**

The term providing for the length of the fixed term and the expiry date, as provided in the tenancy agreement, is inconsistent. Considering the tenancy started December 15, 2015 and the fixed term was for duration of three months, the expiry date could be interpreted to mean March 15, 2016 which is the date the tenant vacated. The landlord claims this part of the tenancy agreement was recorded in error and it was agreed that the fixed term would expire March 31, 2016. Where a term in a contract can be interpreted in different ways, one principle in contract law is to interpret the term in the least favourable way for the drafter of the contract. A tenancy agreement is drafted by

the landlord meaning an ambiguous term will be interpreted in a way that is least favourable for the landlord.

Residential Tenancy Branch Policy Guideline 3: *Claims for Rent and Damages for Loss of Rent* provides policy statements where a landlord intends to make a claim for rent where a tenant fundamentally breaches the term of the tenancy agreement or abandons the rental unit. As provided in the policy guideline, where a tenant indicates to the landlord that they intend to end the tenancy early, generally the landlord is expected to put the tenant on notice that the landlord will hold the tenant responsible for rent for the remainder of the term. The landlord did not do that in this case. Rather, the landlord's response to the tenant was to rearrange the carpet cleaners and communicated to the tenant that she expected the unit to be clean as of March 15, 2016 in order for the landlord to refund the security deposit. Therefore, I find the landlord's actions and communication with the tenant inconsistent with her position that the agreement was for the tenancy to end March 31, 2016 and that she intended to hold the tenant responsible for rent for the period of March 16 – 31, 2016.

Residential Tenancy Branch Policy Guideline 5: *Duty to Mitigate Losses* also provides policy statements for parties including information for landlords who seek to recover loss of rent from a tenant, including an obligation to attempt to re-rent the unit. Although the landlord indicated to the tenant that she would advertise the rental unit for March 15, 2016 the landlord stated during the hearing that she chose not to since she was selling the house. Therefore, the lack of effort to find a replacement tenant brings into question whether the landlord took reasonable steps to mitigate her loss.

In light of all of the above considerations, I find I am not satisfied that the landlord is entitled to unpaid rent from the tenant for the latter part of March 2016 and I dismiss this portion of the claim.

### **Bank fee**

Section 7(1)(c) of the Residential Tenancy Regulations permit a landlord to recover bank fees they incur if the tenant's cheque is returned. Although the landlord demonstrated that a rent cheque was returned in January 2016 the landlord did not present evidence as to whether she was charged a fee by her bank. Rather, the evidence that shows the landlord was charged a fee pertains to the cheque the landlord decided to write to the tenant and then stop the payment. Therefore, I find the landlord did not provide sufficient evidence to demonstrate an entitlement to recover bank fees for a returned cheque and I dismiss this portion of the claim.

**Light fixture**

The receipt provided as evidence by the landlord does not support the landlord's version of events as to replacing a light fixture after the tenancy ended. As previously noted, in the details of dispute of the Application the landlord indicated the light bulbs were out and there was no mention of a loose or damaged light fixture. Therefore, I find the landlord's submissions and evidence is inconsistent and I am not sufficiently satisfied that the tenant is liable to pay for the replacement cost of a new light fixture or light bulbs.

**Carpet replacement**

This claim was withdrawn and I do not consider it further.

**Door handle**

I accept that that the door handle was not reinstalled by the tenant as the landlord made consistent submissions concerning this matter. Where a tenant removes a fixture, such as a door knob, it should be reinstalled before the tenant returns possession to the landlord. I accept that the tenant failed to do so. I find the landlord's claim for compensation to be within reason whether she paid her brother to do it or she did it herself. Therefore, I award the landlord \$20.00 as requested.

**Filing fee**

Given the landlord's very limited success with this Application I make no award for recovery of the filing fee.

**Security Deposit**

The landlord has satisfied me that she is entitled to compensation of \$20.00 from the tenant. Therefore, I authorize the landlord to deduct \$20.00 from the tenant's security deposit.

In keeping with Residential Tenancy Branch Policy Guideline 17: Security Deposits and Set-Off, I order the landlord to return the balance of the security deposit to the tenant, in the net amount of \$392.50, without further delay. Provided to the tenant with this decision is a Monetary Order in the amount of \$392.50 that she may serve and enforce upon the landlord.

**Conclusion**

The landlord has been authorized to deduct \$20.00 from the tenant's security deposit and the landlord has been ordered to return the balance of the tenant's security deposit

to the tenant, in the amount of \$392.50, without further delay. The tenant has been provided a Monetary Order in the amount of \$392.50 to serve and enforce upon the landlord as necessary.

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: September 02, 2016

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Residential Tenancy Branch