



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB, MND, FF

### Introduction

This hearing was convened as a result of the Landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an Order of possession for breach of a tenancy agreement, a monetary Order for damage to the rental unit and to recover the filing fee.

Only the Landlord attended the teleconference hearing. During the hearing the Landlord was given the opportunity to provide his evidence orally. A summary of his testimony is provided below and includes only that which is relevant to the hearing.

As the Tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The Landlord testified that the Notice of Hearing was served on the Tenant by registered mail. A copy of the Canada Post tracking number was provided by the Landlord and is included on the cover page of this my Decision. Section 90 of the *Act* provides that documents served in this manner are deemed served five days later. Further, the Landlord testified that he was informed that on February 18, 2016 the Tenant signed for the registered mail package. I accept the Landlord's undisputed testimony and find that the Tenant was sufficiently served as of February 18, 2016 under the *Act* and I proceeded with the hearing in his absence.

### Preliminary and Procedural Matters

At the outset of the hearing, the Landlord testified that the Tenant vacated the rental unit on January 31, 2016. As a result, the Landlord's request for an Order of possession was no longer required as the Tenant had already given up possession of the rental unit by vacating the rental unit on January 31, 2016.

### Issues to be Decided

1. Is the Landlord entitled to a monetary Order under the *Act*, and if so, in what amount?
2. Should the Landlord recover the filing fee?

### Background and Evidence

The Landlord testified that this eight month fixed term tenancy agreement between the parties began on or about June 1, 2015 and ended on January 31, 2016 when the Tenant vacated the rental unit. Monthly rent in the amount \$2,100.00 was due on the first day of each month during the tenancy. The Tenant paid a \$1,050.00 security deposit at the start of the tenancy which the Landlord returned to the Tenant on or before March 17, 2016.

In the within hearing the Landlord sought recover of the sum of \$500.00 representing the cost to repair a sofa and teak table. The Landlord provided photos of these two items which confirmed the extensive damage to both. The Landlord testified that the rental unit was furnished during the course of the tenancy.

The Landlord testified that at the time of filing he intended to repair the sofa, however, the damage was so extensive this was not possible and the sofa was replaced at a much higher cost. He confirmed that it is his intention to repair the teak table at the conclusion of this hearing as he intends to rely on any award granted to pay for the repair. He confirmed that the amount quoted does not include tax, such that the \$500.00 claimed only covers the net cost of the repair of the teak table, makes no provision for tax or the cost to replace the sofa.

The Tenant failed to attend the hearing to dispute the Landlord's claims.

### Analysis

Based on the documentary evidence, undisputed testimony of the Landlord, and on the balance of probabilities, I find the following.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove his claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the *Act* as follows:

**Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I accept the Landlord's undisputed testimony and find that the Tenant damaged the Landlord's sofa table contrary to section 37(2) of the *Act*.

While the evidence suggests the Landlord suffered a more extensive loss than that which was claimed, Rule 2.2 of the *Residential Tenancy Rules of Procedure* provides that a claim is limited to what is stated on the application. Therefore, I grant the Landlord compensation from the Tenant for the \$500.00 claimed. Further, and as the Landlord's application had merit, I grant the Landlord the recovery of the \$100.00 filing fee.

I grant the Landlord a Monetary Order pursuant to section 67 of the *Act* in the amount of **\$600.00**. This Order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that court.

### Conclusion

I grant the Landlord a monetary Order pursuant to section 67 of the *Act* in the amount of **\$600.00** representing the \$500.00 claimed for damage to the Landlord's furniture and recovery of the \$100.00 filing fee. This Order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: September 29, 2016

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Residential Tenancy Branch