



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that he received the landlords' documentary evidence. The tenant did not submit any documentary evidence for this hearing.

### Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background, Evidence

The landlord's testimony is as follows. The tenancy began on February 1, 2015. The tenants were obligated to pay \$500.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$250.00 security deposit. The landlord testified that she

was given an order of possession from the Branch that took effect at 1:00 p.m. on December 31, 2015. The landlord testified that the tenant did not vacate until January 4, 2016. The landlord testified that she was unable to rent the suite for the month of January due to the condition the unit was left in by the tenant. The landlord testified that she is seeking the loss of rent for the month of January and the recovery of the \$100.00 filing fee.

The tenant gave the following testimony. The tenant testified that he left the keys on the kitchen counter on December 31, 2015. The tenant stated that the unit was left in good condition and that he wants the return of his \$250.00 security deposit.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my finding are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In addition, with no documentary evidence to support their claim, I'm left with just their oral testimony. Based on the insufficient supporting documentation of the landlord, I dismiss their claim.

The landlord has not been successful in her application.

### Conclusion

The landlords' application is dismissed. The landlord is to return the \$250.00 security deposit to the tenant. I grant the tenant an order under section 67 for the balance due of \$250.00. This order may be filed in the Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 20, 2016

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Residential Tenancy Branch