



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNR MNDC MNSD FF

### Introduction

This hearing was convened in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- a monetary order for compensation for unpaid rent, loss and damage pursuant to section 67;
- authorization to retain of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenants did not attend this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on September 21, 2016, copies of the Application for Dispute Resolution and Notice of Hearing were sent to both tenants by registered mail. The landlord provided the registered mail receipts and tracking numbers in support of service.

Based on the above evidence, I am satisfied that the tenants were served with the landlord's Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenants.

### Issues

Is the landlord entitled to a monetary award for compensation for unpaid rent, loss and damage to the rental unit?

Is the landlord entitled to retain all or a portion of the security deposit pursuant to section 38?

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

### Background

The rental unit is one half of a five bedroom duplex residential house. The tenancy began on March 15, 2015 with a monthly rent of \$1800.00 payable on the 1<sup>st</sup> day of each month. The tenancy was for a fixed term until on March 30, 2017. The tenants paid a security deposit and pet deposit totalling \$1800.00 at the start of the tenancy. The landlord returned \$1000.00 of this deposit to the tenants on September 27, 2016 and continues to retain the balance of \$800.00. The tenancy ended on September 19, 2016 before the end of the fixed term.

### Evidence & Analysis

Based on the uncontested testimony and the documentary evidence provided by the landlord, my findings in relation to the various aspects of the landlords' application as set out in the "landlord's costs" summary are as follows:

- #1: \$200.00 for cleaning*
- #2: \$246.75 carpet cleaning*
- #3: \$200.00 carpet damage*
- #6: \$200.00 for junk and garbage removal*

The landlord submitted receipts for cleaning the rental unit, receipts from a carpet cleaning service and a receipt for the junk removal. The landlord testified the rental unit was not left clean and the carpet was stained and not professionally cleaned at the end of the tenancy. The landlord also submitted a move-out condition inspection report supporting his testimony. The move-out condition inspection report was signed by tenant S.R.K. With respect to the claim for the carpet damage, the landlord testified that the carpet was replaced at a cost of \$600.00 at the start of the tenancy. The landlord had the carpet professionally cleaned at the end of the tenancy but cleaning did not remove the stain damage. The landlord's witness, J.L. testified that the carpet was still stained after being professionally cleaned.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Section 37 of the Act requires 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.

I accept the landlord's testimony, supporting invoices and condition inspection report as evidence in support of the landlord's claim that the tenant did not leave the rental unit reasonably clean at the end of the tenancy. I find the landlord is entitled to an award of **\$646.75** as per the invoices submitted. The landlord's claim for the additional \$200.00 as damages to the carpet is dismissed as the landlord provided insufficient evidence to establish the amount of or value of the loss suffered as a result of this damage. The landlord did not present any picture evidence as to the extent of the stain damage nor did the testimony of the landlord and his witness reflect the extent of the damage.

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*#4: \$183.16 for advertising unit*

*#5: \$450.00 liquidated damages*

The tenancy agreement signed by the parties stipulates the landlord may require the tenant to pay a sum of \$450.00 as liquidated damages if the tenant terminates the tenancy before the end of the fixed term. The landlord is also claiming advertising costs incurred for re-renting the unit.

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance to the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

In this case, the liquidated damages clause is intended to compensate the landlord for losses resulting from the costs of re-renting the rental unit after a tenant breach. I find the amount of \$450.00 as being a reasonable pre-estimate of the loss in order to compensate the landlord for any administrative costs incurred in re-renting the unit. I find this amount is not extravagant and does not constitute a penalty. I find the landlord is entitled to an award of **\$450.00**. As these liquidated damages are intended to compensate the landlord for costs associated with re-renting the unit, the landlord cannot also claim advertising costs in addition to the liquidated damages. This part of the landlord's application is dismissed.

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*#7: \$450.00 outstanding rent for September*

The landlord testified rent for the month of September 2016 was not paid in full and a balance of \$450.00 is outstanding.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations

or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the landlord's testimony and find the tenant was obligated to pay rent in the amount of \$1800.00 but failed to pay rent in full for the month of September 2016. The landlord is awarded **\$450.00**.

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*filing fee and security deposit:*

As the landlord was for the most part successful in this application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application for a total monetary award of **\$1,646.75 (646.75 + 450.00 + 450.00 + 100.00)**.

The landlord continues to hold a security deposit of \$800.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act. Therefore, I find that the landlord is entitled to a Monetary Order in the amount of **\$846.75**.

#### Conclusion

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of **\$846.75**. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: November 14, 2016

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Residential Tenancy Branch