



# 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 was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on May 19, 2016. The Landlords filed seeking a Monetary Order for: unpaid rent or utilities; compensation for damage or loss under the Act, Regulation, or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the male Landlord and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord affirmed he was representing both landlords. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Has the Landlord proven entitlement to monetary compensation?
2. Does the Tenant have a key, FOB, and parking permit in his possession?

### Background and Evidence

The parties entered into a fixed term tenancy agreement which began on October 1, 2015 and was set to end on June 30, 2016. Rent of \$1,300.00 was payable on the first of each month. On October 1, 2015 the Tenant paid \$650.00 as the security deposit. The Landlord testified he received \$800.00 on May 1, 2016 as partial payment for May rent. He received \$60.00 on May 2, 2016 which left an outstanding balance of \$440.00.

On May 3, 2016 the Landlord served the Tenant a 10 Day Notice to end tenancy listing an effective date of May 14, 2016.

On May 17, 2016 the sent the Landlord a text message that he had moved out of the rental unit on May 14, 2016. On approximately May 17, 2016 the Landlord attended the rental unit and was not able to enter as the lock had been changed by the Tenant. The Landlord attempted to contact the Tenant by text message and letter to try and obtain the key, the building FOB, and the parking permit. The Tenant did not respond and on May 19, 2016 the Landlord hired a locksmith to change the locks.

On May 26, 2016, after the Landlord had filed his application for Dispute Resolution the Tenant deposited \$440.00 into the Landlord's bank account which paid the balance of the outstanding rent for May 2016. The Landlord now seeks \$1,300.00 loss of rent for June 2016 plus \$176.38 for the locksmith fees. The Landlord testified that he was able to re-rent the unit effective June 1, 2016. The Landlord confirmed the new tenant paid the full month's rent for June 2016.

The Tenant testified that he attempted to communicate with the Landlord via text message in order to negotiate a safe and appropriate way to return the key, FOB, and parking pass. He confirmed he had changed the lock for safety reasons and did not provide the Landlord with a key. He confirmed he vacated the rental unit as of May 14, 2016 after receiving the 10 day Notice.

The Tenant submitted that he still has the key, FOB, and parking pass and was willing to return them to the Landlord; however, the Landlord told him not to come to the building. After a brief discussion the parties agreed to meet at the building on Friday November 18b, 2016 at 4:00 p.m. at which time the Tenant would return the key, FOB, and parking pass to the Landlord. Each person agreed to sign receipts, one copy for each person, to confirm the items had been returned.

### Analysis

The *Residential Tenancy Act* (the *Act*) stipulates provisions relating to these matters as follows:

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

**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 that 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 that party to pay, compensation to the other party.

Section 31(3) of the Act stipulates that a tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered the change.

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.

After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the Act as follows:

Regarding the claim for May 2016 unpaid rent, the Landlord withdrew that request as the Tenant paid the \$440.00 outstanding May rent on May 26, 2016.

The undisputed evidence was the Tenant changed the lock on the rental unit, without the Landlord's permission and without providing the Landlord a copy of the key, in breach of section 31 of the Act. That breach caused the Landlord to suffer a loss of \$176.38 when he had to hire a locksmith to gain entry and change the lock. As such, I find the Landlord submitted sufficient evidence and I award him compensation for locksmith fees in the amount of **\$176.38**, pursuant to section 67 of the Act.

Regarding the claim for loss of rent for June 2016, from his own submission the Landlords mitigated their loss by re-renting the unit effective June 1, 2016. The new tenant paid the full month's rent for June 2016; therefore, I find there was insufficient evidence to prove the Landlords suffered a loss of rent for June 2016. Accordingly, the request for loss of June rent is dismissed, without leave to reapply.

The Landlord has partially succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

**Monetary Order** – This claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit plus interest as follows:

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$650.00 deposit since October 1, 2015.

Locksmith fees	\$ 176.38
Filing Fee	<u>100.00</u>
<b>SUBTOTAL</b>	\$ 276.38
<b>LESS:</b> Security Deposit \$650.00 + Interest 0.00	<u>- 650.00</u>
<b>Offset amount due to the Tenant</b>	<u><b>(\$373.62)</b></u>

The Landlords are hereby ordered to pay the Tenant the offset amount of **\$373.62**, forthwith.

In the event the Landlords do not comply with the above Order, the Tenant has been issued a Monetary Order for **\$373.62**. This Order must be served upon the Landlords and may be enforced through Small Claims Court.

#### Conclusion

The Landlords were partially successful with their application and were awarded \$276.38. That award was offset against the Tenant's security deposit leaving a balance due to the Tenant in the amount of \$373.62.

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: November 22, 2016

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Residential Tenancy Branch