



# 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 was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on June 21, 2016. The Landlords filed seeking a \$1,857.15 Monetary Order for: damage to the unit site or property; unpaid rent or utilities; to keep all or part of the security and/or pet deposit; for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the female Landlord who gave affirmed testimony that she would be representing both Landlords in this matter. No one was in attendance on behalf of the Tenant.

The Landlord testified that the Tenant was served notice of this application, the hearing, and their evidence by registered mail to the Tenant's forwarding address on June 25, 2016. The Canada Post tracking receipt was submitted into evidence. A copy of the Canada Post tracking website was also submitted and indicated the package was signed received on June 26, 2016, by someone with a name other than the Tenant's name. Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed.

Based on the undisputed evidence of the Landlords, I find that the Tenant was deemed served notice of this application and hearing on June 30, 2016, pursuant to section 90 of the *Act*. As such I continued to hear the undisputed evidence of the Landlords in absence of the Tenant.

The Landlords provided clarification that the Tenant's rented a self-contained suite located at the back of the singled detached house as noted as suite number "2 Rear" on the tenancy agreement. Accordingly, the style of cause on the front page of this Decision was amended to clarify the rental unit address, pursuant to section 64(3)(c) of the *Act*.

### Issue(s) to be Decided

Have the Landlords proven entitlement to monetary compensation?

### Background and Evidence

The Landlords submitted evidence that the Tenant entered into a month to month written tenancy agreement that commenced on March 1, 2016. Rent of \$625.00 was payable on or before the first of each month. On February 9, 2016 the Tenant paid \$310.00 as the security deposit. A move in condition inspection report was completed in the presence of both parties on April 1, 2016.

On April 20, 2016 the Landlords served the Tenant a 1 Month Notice to end tenancy for cause listing an effective date of May 31, 2016. On May 2, 2016, when May rent remained unpaid, the Landlords served the Tenant a 10 Day Notice to end tenancy for unpaid rent. The 10 Day Notice listed an effective date of May 12, 2016.

The Landlord testified they continued to check to see if the Tenant had vacated the unit and each time the Tenant told them she did not have anyone who could help her move her possessions. On May 21, 2016 the Landlords attended the unit and determined the Tenant had moved out leaving the rental unit dirty, damaged, and scattered with her possessions.

The Landlords submitted their application for Dispute Resolution seeking \$2,167.15 monetary compensation for the following: \$120.00 carpet cleaning; \$33.57 to replace broken window blind; \$100.00 for suite cleaning; \$33.92 paint; \$194.25 patch and repair holes in the walls; \$275.97 replacement oven door glass; \$19.03 cleaning products; \$108.16 to rekey locks; \$32.25 landfill fees to discard the debris left by the Tenant; \$625.00 for May 1, 2016 unpaid rent; and \$625.00 for loss of June 2016 rent. The Landlord submitted they were not able to re-rent the unit in June 2016 as they were busy cleaning and repairing the unit.

Upon review of the Landlords' receipts the Landlord testified that she hired a carpet cleaner who was not affiliated with the cleaning person they hired. She stated that when those contractors came to her to get paid for the work they completed she had each of them sign a receipt in her own receipt book as proof she paid them cash for the work they completed on the rental unit. She stated that if she had not done that she would not have received a receipt for the work she paid to have completed.

In support of their application the Landlords submitted, among other things, copies of: the tenancy agreement; photographic evidence; the condition inspection report form; and receipts for the amounts they claimed.

### Analysis

**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

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. 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:

Under section 26 of the Act, a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this Act.

I accept the Landlords' undisputed evidence the Tenant failed to pay their May 1, 2016 rent in accordance with section 26 of the Act. Accordingly, I grant the Landlords' application for unpaid rent in the amount of **\$625.00**, pursuant to section 67 of the Act.

Section 37(2) of the Act provides 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; and must return all keys to the Landlord.

I accept the Landlords' undisputed evidence that the Tenant left the rental unit requiring additional cleaning and repairs. Therefore, I find the Tenant breached section 37 of the Act. In addition, I find the Tenant's breach caused the Landlords to suffer the following losses: \$120.00 carpet cleaning; \$33.57 to replace broken window blind; \$100.00 for suite cleaning; \$33.92 paint; \$194.25 patch and repair holes in the walls; \$275.97 replacement oven door glass; \$19.03 cleaning products; \$108.16 to rekey locks; and \$32.25 landfill fees. Accordingly, I grant the undisputed application for cleaning and repairs in the amount of **\$917.15**, pursuant to section 67 of the Act.

In addition, I accept the undisputed evidence that the Landlords did what was reasonable to mitigate their loss by cleaning and repairing the unit as soon as possible. However, despite their efforts they were not able to re-rent the unit until July 2016 due to the Tenant's breach of leaving the unit dirty and damaged. Accordingly, I grant the application for loss of June 2016 rent in the amount of **\$625.00**, pursuant to section 67 of the Act.

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.

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

This monetary award 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 \$310.00 security deposit since February 9, 2016.

|  |                          |
|--|--------------------------|
| Unpaid May 2016 Rent                                     | \$ 625.00                |
| Cleaning and Repairs                                     | 917.15                   |
| Loss of June 2016 Rent                                   | 625.00                   |
| Filing Fee   | <u>100.00</u>            |
| <b>SUBTOTAL</b>  | <b>\$2,267.15</b>        |
| <b>LESS: Security Deposit \$310.00 + Interest \$0.00</b> | <b><u>-310.00</u></b>    |
| <b>Offset amount due to the Landlords</b>                | <b><u>\$1,957.15</u></b> |

The Tenant is hereby ordered to pay the Landlords the offset amount of \$1,957.15, forthwith.

In the event the Tenant does not comply with the above order, the Landlords have been issued a Monetary Order in the amount of **\$1,957.15** which may be enforced through Small Claims Court upon service to the Tenant.

#### Conclusion

The Landlords have succeeded with their application and were awarded monetary compensation of \$2,267.15 which was offset against the Tenant's security deposit leaving a balance owed to the Landlords of **\$1,957.15**.

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: December 22, 2016

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Residential Tenancy Branch