



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 2:00 p.m. in order to enable them to connect with this teleconference hearing scheduled for 1:30 pm. The landlord's representative (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the landlord sent both tenants copies of the dispute resolution hearing packages by Canada Post's ExpressPost service, in which signatures were required for service on June 15, 2016. She said that she sent these packages to the rental unit because the tenants had advised her that they had arranged to have Canada Post redirect their mail to their new address. She entered into written evidence copies of the female tenant's email to this effect. The landlord testified that she had checked Canada Post's online tracking service and discovered that both packages were received on June 30, 2016. In accordance with sections 89 and 90 of the *Act*, I find that the dispute resolution hearing packages were deemed served to both tenants on June 20, 2016, the fifth day after their mailing. The landlord also testified that copies of the landlord's written evidence package were received by both tenants by ExpressPost on or about November 24, 2016. I find that both tenants were served with the landlord's evidence in accordance with sections 88 and 90 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, losses and damages arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' pet damage and security deposits (the deposits) in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

This one-year fixed term tenancy commenced by way of a Residential Tenancy Agreement (the Agreement) on August 1, 2015, signed on July 7, 2015. Monthly rent was set at \$1,700.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$850.00 security deposit paid on or about July 7, 2015, and the tenants' \$850.00 pet damage deposit paid on or about August 1, 2015.

The landlord's application for a monetary award of \$4,588.50 included the following:

Item	Amount
Unpaid Rent	\$2,350.00
Liquidated Damages	850.00
Replacement of Vinyl Slats	70.00
Cleaning and Materials	576.00
Painting and Material	202.50
Repair (Labour)	40.00
Bulb and Smoke Detector	120.00
Abandoned Furniture and Junk Removal	380.00
<b>Total Monetary Order</b>	<b>\$4,588.50</b>

The landlord also applied to recover the \$100.00 filing fee for this application and to retain the tenant's deposits in partial satisfaction of the monetary award requested.

The landlord entered into written evidence copies of the August 1, 2015 joint move-in condition inspection report signed by the female tenant and the landlord, and a May 28, 2016 move-out condition inspect report signed by the landlord. The move-out inspection occurred without the tenants, as the tenants had abandoned the rental unit and left no forwarding address at that time. The landlord also entered into written evidence a copy of a May 28, 2016 Notice of Final Opportunity to Schedule a Condition Inspection, posted on the tenants' door. The letter testified that the tenant vacated the rental unit on or about May 27, 2016.

The landlord also entered into evidence photographs of the condition of the rental unit at the end of this tenancy, including abandoned material left behind by the tenants, as well

as evidence of the damage that occurred during the course of this tenancy. The landlord also entered into written evidence copies of receipts and invoices for work performed at the end of this tenancy to restore the condition of the rental unit.

At the hearing, the landlord testified that other staff within the landlord's organization had prepared the rent ledger statement that the landlord entered into written evidence. She explained that a 10 Day Notice to End Tenancy for Unpaid Rent was issued to the tenant on March 17, 2016. Although the tenant made two rental payments in April 2016, she testified that some of the tenant's pre-authorized rent payments were disallowed due to insufficient funds being in the tenant's account. She testified that \$2,000.00 in rent remained owing, as well as two \$25.00 late fees and two \$25.00 NSF cheque fees, that were both outlined in the tenancy agreement.

### Analysis

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and e-mails, invoices, and the testimony of the landlord, not all details of the submissions are reproduced here. The principal aspects of the landlord's claim and my findings around each 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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenants caused damage and losses and that the damage was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Based on the landlord's undisputed written evidence and in accordance with sections 7(1) and 67 of the *Act*, I find that the landlord is entitled to a monetary award of \$2,100.00 in rent owing, late fees and NSF cheque fees for this tenancy. These were the amounts identified as owing by the landlord at the hearing.

Clause 4 of the Agreement established the following liquidated damages provision:

*...However, if the Tenant terminates the tenancy before the end of the original term, the Landlord may, at the Landlord's option, treat this Agreement at an end*

*and in such event the sum of **\$850** shall be paid by the Tenant to the Landlord as liquidated damages and not as a penalty. The payment by the Tenant of the said liquidated damages to the Landlord is agreed to be in addition to any other right or remedies available to the Landlord...*

(emphasis in original)

As there is undisputed evidence that the tenants ended this tenancy before the end of the initial fixed term and the landlord has not claimed against unpaid rent owing through the remainder of the fixed term, I find that the landlord is entitled to \$850.00 in liquidated damages as per Clause 4 of the Agreement. I issue this award in accordance with sections 7(1) and 67 of the *Act*, as the tenants did not abide by the terms of their fixed term Agreement.

Paragraph 37(2)(a) of the *Act* establishes 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.”

At the hearing, the landlord testified that the rental unit was painted shortly before this tenancy began in August 2015. Residential Tenancy Branch Policy Guideline 40 establishes the Useful Life for various elements of a residential tenancy. The Useful Life of an interior paint job is estimated at four years (48 months). There is undisputed evidence that the landlord had to repaint the rental unit in June 2016, far sooner than would have been anticipated by Policy Guideline 40. For this reason and in accordance with paragraph 37(2)(a) and section 67 of the *Act*, I allow the landlord a monetary award of \$156.09  $\{ \$202.50 \times (48 - 11)/48 \} = \$156.09$  for painting and materials associated with this repainting.

I find that the landlord’s undisputed written evidence and sworn testimony was sufficient to enable the landlord to establish that the tenants did not leave the rental unit reasonably clean or undamaged. In this regard, the landlord’s undisputed joint move-in and move-out condition inspection reports, photographs, invoices and sworn testimony lead me to conclude that all of the remainder of the landlord’s claim for a monetary award is justified. For this reason and in accordance with paragraph 37(2)(a) and section 67 of the *Act*, I allow the remainder of the landlord’s monetary claim.

As the landlord has been successful in this application, I allow the landlord to recover the \$100.00 filing fee for this application.

In accordance with sections 38 and 72(2) of the *Act*, I also allow the landlord to retain the deposits in partial satisfaction of the monetary award issued in this decision, plus applicable interest. No interest is payable over this period.

### Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, losses and damage arising out of this tenancy and the filing fee, and to retain the tenants' deposits:

<b>Item</b>	<b>Amount</b>
Unpaid Rent, Late Fees and NSF Fees	\$2,100.00
Liquidated Damages	850.00
Replacement of Vinyl Slats	70.00
Cleaning and Materials	576.00
Painting and Material	156.09
Repair (Labour)	40.00
Bulb and Smoke Detector	120.00
Abandoned Furniture and Junk Removal	380.00
Less Deposits	-1,700.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$2,692.09</b>

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: December 16, 2016

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**Residential Tenancy Branch**