



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNR, MNSD, OPL, OPR

### Introduction

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

- an Order of Possession based on a Two Month Notice to End Tenancy for Landlords' Use of Property and for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to retain all or a portion of the tenants' pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants 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 parties acknowledged receipt of evidence submitted by the other.

At the outset of the hearing both parties confirmed that the tenant had moved out and that an order of possession was no longer required, based on that information I dismiss that portion of the landlords' application.

### Issues(s) 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 tenants' 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

The landlord gave the following testimony. The tenancy began on or about October 1, 2014. Rent in the amount of \$1750.00 is payable in advance on the first day of each month. At the outset of the tenancy the tenants paid a security deposit of \$875.00 which the landlord holds in trust as of the time of this hearing. The landlord testified that on October 10, 2016 he served the tenants a Two Month Notice to End Tenancy for Landlords Use of Property with an effective date of December 31, 2016. The landlord testified that he received an email from the tenant on October 31, 2016 advising that she would be moving out by November 30, 2016. The landlord testified that the tenant did not pay the rent for November. The landlord testified that since the tenant didn't live in the unit until December 31, 2016 she still owes him for November. The landlord also seeks the following costs for damages that he alleges the tenant is responsible for; \$400.00 for damages to a window, \$200.00 to replace garage door remotes, \$50.00 for a refrigerator drawer, \$50.00 for scratches to a wall and the \$100.00 filing fee.

The landlord is applying for the following:

Item	Amount
Unpaid November Rent	\$1750.00
Window	\$400.00
Garage door remotes	\$200.00
Fridge drawer	\$50.00
Scratches to wall	\$50.00
Filing Fee	\$100.00
Less deposits	-\$875.00
<b>Total Monetary Order</b>	<b>\$1675.00</b>

The tenant gave the following testimony. The tenant testified that she gave a full month's notice to end the tenancy when only ten days is required as per the notice he served her. The tenant testified that she was concerned that the landlord would not honor the notice and give her the one month's compensation so she did not pay the November rent. The tenant testified that she was trying to avoid any issues with the landlord and nonpayment. The tenant testified that even if she had paid him, he was to pay her back and that claim would cancel itself out and that the only issue is the matter of the security deposit.

The tenant testified that the window damage is from the house settling and not through her actions. The tenant testified that she purchased a generic remote to replace the

missing one and should not be responsible for that claim. The tenant accepts responsibility for the refrigerator crisper drawer and the scratches to the wall.

### Analysis

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

#### 1. Unpaid November Rent – \$1750.00.

The landlord acknowledged that he received the tenants e-mail on October 31, 2016. The landlord also agreed that the tenant was entitled to one months' compensation but only if she had lived in the unit until December 31, 2016. I made several attempts to explain that is not the case and the notice to end tenancy clearly outlines that: "*A tenant that receives this Notice can give 10 day's written notice and move out early. The landlord must still pay the tenant one months' rent as compensation*", however the landlord insisted that the tenant must live in the property for the two full months.

Section 50 of the *Act* addresses this issue as follows:

**50** (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

Based on the above I find that the landlord was to provide one months' rent as compensation. The tenant did not pay the rent for November 2016 and therefore has received her compensation. The landlord is not entitled to any unpaid rent as outlined above. I dismiss this portion of his application.

2. Window - \$400.00.

The landlord testified that someone must have stood on the window ledge and damaged it. The tenant disputed this claim and testified that it must have been from settling as the home is new. The landlord has not yet done this repair. The landlord has not provided sufficient evidence to support his claim that the tenant was responsible for this damage. In addition, the landlord has not provided sufficient evidence to show how much it would actually cost him to repair it. Based on the above and on a balance of probabilities, I dismiss this portion of the landlords' application.

3. Garage Remotes - \$200.00

The landlord testified that he gave the tenants two remotes and one is missing. The landlord testified that they work in pairs and that the generic one provided by the tenant doesn't work. The landlord advised that the tenant is welcome to pick up her remote. The landlord has not replaced the remotes at this time. The tenant testified that she was only given one remote and that the generic one should suffice.

Based on the tenants acknowledgment that she attempted to replace a remote I find that the landlord is entitled to a monetary award but not the amount as sought. The landlord has not provided sufficient evidence to show that two remotes were issued and the costs to replace them. I find that \$100.00 is the reasonable and appropriate amount and the landlord is entitled to that.

4. Refrigerator door - \$50.00.

The tenant accepted responsibility for this claim and offered to pay \$75.00 as she made inquiries into the actual cost. Based on that acknowledgment the landlord is entitled to \$75.00.

5. Repair scratches on wall - \$50.00.

The tenant accepted responsibility for this claim. Based on that acknowledgment the landlord is entitled to \$50.00.

The landlord is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

Item	Amount
Garage Remote	\$100.00
Refrigerator Drawer	\$75.00
Fix Scratches on Wall	\$50.00
Filing Fee	\$100.00
<b>Total Monetary Order</b>	<b>\$325.00</b>

The landlord has established a claim for \$325.00. I order that the landlord retain \$325.00 from the security deposit in full satisfaction of the claim. The landlord must return the remaining \$550.00 of the security deposit to the tenant. I grant the tenant an order under section 67 for the balance due of \$550.00. 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: January 09, 2017

---

Residential Tenancy Branch