



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR MND MNDC MNSD FF

### **Introduction:**

The landlord and one of the three tenants made Applications and attended the hearing. They gave sworn testimony. The landlord provided evidence that he served the tenants with the Application by registered mail. The tenant who attended said he sent all 3 Applications to his address so he claimed only the package that had his name on it. The landlord said the tenant did not serve him legally with his Application. It had the wrong address on it and someone left it in his mailbox; it was not registered mail. I find the landlord served the one tenant, E.P, legally pursuant to section 89 of the Act. I find the tenant did not serve his Application as required by section 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7 and 67 for unpaid rent, utilities and damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

One tenant (E.P.) applies for twice his security deposit refunded pursuant to section 38 of the Act.

### **Issue(s) to be Decided:**

Has the landlord has proved on a balance of probabilities that the tenant owes rent, utilities and costs of damages to the property? Is the landlord entitled to recover the filing fee?

### **Background and Evidence:**

The landlord and one tenant attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The landlord stated that this tenancy commenced in January 1, 2017, that monthly rent was \$1250 and a security deposit of \$625 was transferred from the previous tenancy of the female tenant. They described the situation. The female tenant had occupied the home with two other room mate/tenants. She had some problems with them and they vacated. A new tenancy agreement was made with her and two new tenants that applied. He said the female tenant had cleaned the carpets before the start of the new tenancy and they seemed fine. He did not do a condition inspection report with her.

On or about February 7, 2017, the female tenant gave a notice to end tenancy on February 28, 2017 by text and verbally but she did not move out. On March 3, 2017, the landlord entered based on text and phone messages and found the home abandoned with furniture and much garbage left behind. He had to take 4 pickups of garbage to the dump. He said the carpets were saturated with pet urine and the professional cleaner is still trying to clean it. The female tenant refused to return the keys so he had to pay to have the locks changed. He said she told him she would only return the keys if he agreed to absolve her from any debts and legal action regarding the tenancy. The utilities were unpaid. He said the female tenant said to use the security deposit to pay for the utilities. All invoices for the claim were supplied by the landlord.

The landlord claims as follows:

\$85.25 for dumping fees to the city.

\$24.63 for lock change

\$67.63 for cleaning supplies

\$140 for cleaning inside the home

\$424.20 for professional carpet cleaning

\$221.91 65% Fortis Gas bill unpaid from January 15, 2017 to March 14, 2017

\$305.18 for 65% of BC Hydro unpaid from January 12 to March 13, 2017

\$424.80 for outside cleaning and labour to take garbage to landfill

\$625 for half of one month's rent to March 15, 2017 due to insufficient notice to end tenancy.

The Tenant, E.P., who attended provided evidence he had paid \$200 security deposit and \$400 for rent to the female tenant on December 31, 2016. He also had evidence that he paid \$71 for utilities and \$50 for Shaw to her. He provided a copy of a Notice to End Tenancy dated January 26, 2017 which he provided to the landlord stating he was vacating by mid February but giving notice to end the tenancy as of February 28, 2017. He provided a forwarding address by text to the landlord on March 2, 2017 and requests twice his security deposit refunded.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

### **Analysis**

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that the home was left dirty with a lot of garbage and other items left behind. I find the amount of damage and costs are supported by statements, photographs and invoices. I find the landlord entitled to recover \$85.25 for dumping fees to the city, \$67.63 for cleaning supplies, \$140 for cleaning inside the home, \$424.20 for professional carpet cleaning and \$424.80 for outside cleaning and labour to take garbage to the landfill.

I find the weight of the evidence is that the tenant did not pay utility bills so I find the landlord entitled to recover \$221.91 which is 65% of the Fortis Gas bill unpaid from January 15, 2017 to March 14, 2017 and \$305.18 for 65% of BC Hydro unpaid from January 12 to March 13, 2017. Although I find the tenant, E.P., who attended paid some money for rent and utilities to the female tenant, I find the tenants are jointly and severally liable for the costs incurred by the landlord. I find E.P. was on the lease agreement and initialed beside his name. Although E.P. gave Notice to End his tenancy for February 28, 2017, I find the weight of the evidence is that all the tenants did not give sufficient Notice to vacate on February 28, 2017. I find the female tenant sent a text message to end the tenancy on February 7, 2017 but did not move out on February 28, 2017 and refused to return the keys. I find a Notice by text is not recognized as legal service of a Notice to End Tenancy pursuant to section 88 of the Act. A tenant must serve a full month's Notice to End Tenancy according to section 45 of the Act and any notice served in February would not be effective until March 31, 2017. The landlord chooses to claim just one half a month's rent in the amount of \$625 and I find him entitled to recover this amount \$24.63 for the lock change necessitated by the female tenant's refusal to return keys.

As discussed with E.P. in the hearing, he is a joint tenant on the lease and jointly and severally liable for the costs. He may choose to claim over (in a separate court) to claim contribution from the other joint tenants.

I dismiss his claim for twice his security deposit refunded. I find insufficient evidence that it was paid to the landlord and this hearing is not the right forum to claim

compensation from the other tenants to the joint tenancy. In any case, I find the landlord was not legally served with his Application but, as explained to him in the hearing, leave to re-apply would be of no benefit to him as he did not pay a security deposit to the landlord.

**Conclusion:**

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit of the female tenant to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application. I dismiss the Application of the tenant in its entirety without recovery of the filing fee due to lack of success.

**Calculation of Monetary Award:**

Dumping fees to city	85.25
Lock change	24.63
Cleaning supplies	67.63
Inside cleaning	140.00
Outside cleaning & labour for dumping	424.80
Professional Carpet cleaning	424.20
Fortis Gas bill	221.91
BC Hydro bill	305.18
Rent March 1-15, 2017	625.00
Filing fee	100.00
Less security deposit	-625.00
<b>Total Monetary Order to Landlord</b>	<b>1793.60</b>

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: April 26, 2017

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Residential Tenancy Branch