



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MEICOR PROPERTY MANAG  
EMENT SERVICES INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MNR MNSD MNDC FF CNC OLC

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- a monetary order for unpaid rent and utilities pursuant to section 67;
- a monetary order for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant’s 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 tenant requested:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlords pursuant to section 72;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

SS (‘landlords’) appeared on behalf of the landlords and was given full authority to act on behalf of the landlords. 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.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenant were duly served with the Applications and evidence.

The tenant applied to cancel a 1 Month Notice. The tenant indicated in the hearing that she had moved out of the rental suite on December 2, 2016. As the tenant had moved out, she withdrew her application for cancellation of the 1 Month Notice.

### **Issues(s) to be Decided**

Are the landlords entitled to a Monetary Order for Unpaid Rent and Utilities?

Are the landlords entitled to a Monetary Order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Is the tenant entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

### **Background and Evidence**

This tenancy began in May of 2016, with monthly rent set at \$725.00. The landlords had collected a security deposit of \$362.50 from the tenant, and this security deposit remains in the possession of the landlords.

SS testified in the hearing that the tenant had moved out on December 2, 2016 without any notice, and without cleaning the unit. The tenant left furniture behind such as a bed and sofa, and the landlords' keys on the counter of the suite. The landlords submitted receipts in their evidence to support their monetary claim. SS testified that a move-in inspection was completed, but as the tenant gave no notice, forwarding address, or contact information, the landlords had no way of returning the tenant's security deposit, or arranging for a proper move-out inspection. SS testified that the tenant also failed to pay a portion of the December 2016 rent, and the landlords are seeking a monetary order in the amount of \$135.00 and \$25.00 late fee for this unpaid rent.

The landlords are seeking compensation as follows:

| <b>Item</b>                            | <b>Amount</b>   |
|--|-----------------|
| Professional Cleaning of Suite         | \$90.00         |
| Carpet Cleaning                        | 115.50          |
| Removal of Couch and Bed               | 60.00           |
| Cleaning & Lock Change                 | 60.00           |
| Unpaid Rent & Late Fee                 | 160.00          |
| Filing Fee                             | 100.00          |
| Security Deposit Retained by Landlords | -362.50         |
| <b>Total Monetary Order Requested</b>  | <b>\$223.00</b> |

The tenant testified that she had moved out as her unit lacked heat, and she was told that this would not be fixed until the summer of 2016. The lack of heat was due to flooding which damaged the electrical wiring, and the landlords advised that she should use her stove to heat the apartment. The tenant admitted that she vacated the suite on December 2, 2016 without proper notice. The tenant disputes the landlords' claim that she did not provide a forwarding address. The tenant testified that she wrote a letter on December 2, 2016 to the landlords providing her forwarding address and requesting the return of her security deposit. The tenant did not have a copy of the original letter, but reproduced a copy of this letter for the purpose of this hearing. The handwritten letter reads "I am giving notice that I am vacating my Rental Apartment...My damage deposit cheque may be mailed to my daughter in Winnipeg. Her address is...". The tenant testified that this letter was placed in the landlords' mailbox on December 2, 2016, and that it was received by the landlords as they saw her place it in the mailbox. The tenant is seeking the return of her security deposit as well compensation for the landlord's failure to comply with section 38 of the *Act*.

The tenant did not dispute the fact that she failed to pay December 2016 rent in full, as she withheld the money for the lack of heat in her unit. She also admitted to leaving furniture behind in her unit as she had intended to gift the furniture to her neighbours to pick up from her suite. She testified that the rental suite was immaculate and did not require any cleaning.

The landlords' agent, in the hearing, provided sworn testimony that the heat was fixed and functioning, and that the tenant did not provide any handwritten letter or forwarding address as the tenant maintained at this hearing.

### **Analysis**

I considered the testimony of both parties, and I find that it was undisputed that the tenant withheld rent. Section 26(1) of the *Act* states that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent."

No applications for dispute resolution have been filed by the tenant in regards to this tenancy. The tenant moved without giving any notice to the landlords. The evidence is clear that the tenant did not comply with the *Act* in ending this tenancy, and I therefore, find that the tenant vacated the rental unit contrary to Sections 44 of the *Act*. The tenant also did not have permission from the landlord nor an Arbitrator to withhold rent. Accordingly, I find the landlords are entitled to a monetary order for the \$135.00 in rent withheld by the tenant plus the \$25.00 late fee.

The tenant did not dispute the fact that she did not give proper notice to the landlords upon move out, nor did she dispute that she had left furniture behind in her apartment. The tenant testified that she did provide a forwarding address to the landlord, but admitted that the letter provided in evidence was re-produced for the purpose of this hearing. The tenant did not provide any witness testimony or tracking information to demonstrate that the landlord did indeed receive this letter, and on this basis I find the tenant did not provide me sufficient evidence to find that the landlord was provided with her forwarding address in writing as required by the *Act*. On this basis I find that the landlords did not fail to abide by section 38 of the *Act*, and the tenant's application for a monetary award is dismissed.

The landlords made an application to retain this security deposit in partial satisfaction of their monetary claim for damages and losses arising out of this tenancy. I find that the

tenant did not dispute that fact that she failed to clean her unit, leaving furniture behind. I also find that the landlords provided sufficient documentation and receipts to support the losses arising out of this tenancy, and the tenant's failure to properly vacate this unit.

The landlords, in their monetary claim, requested \$60.00 for cleaning and lock change. The responsible of changing locks falls on the landlord, and not the tenant, as stated in section 25(1) of the *Act* below:

25 (1) At the request of a tenant at the start of a new tenancy, the landlord must

(a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and

(b) pay all costs associated with the changes under paragraph (a).

As the lock change is submitted as a lump sum with cleaning, and as the landlords had already made a claim for professional cleaning, I am dismissing this portion of the landlords' claim. Accordingly, I find the landlords are entitled to a monetary order in the amount of \$425.50. As the landlords were successful in their application, I find the landlords are entitled to the recovery of their filing fee. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit in satisfaction of the monetary claim.

As the filing fee is normally awarded to the successful party after a hearing, I dismiss the tenant's application to recover the filing fee for her application.

### **Conclusion**

As the tenant had moved out on December 2, 2016, the tenant withdrew her application to cancel the 1 Month Notice.

I issue a \$163.00 Monetary Order in favour of the landlords under the following terms, which allows the landlords to recover unpaid rent, the losses due to the tenant's failure to properly vacate the rental unit, and the filing fee. I order the landlord to retain the tenant's security deposit in partial satisfaction of the landlords' monetary claim.

| <b>Item</b>                            | <b>Amount</b>   |
|--|-----------------|
| Professional Cleaning of Suite         | \$90.00         |
| Carpet Cleaning                        | 115.50          |
| Removal of Couch and Bed               | 60.00           |
| Unpaid Rent & Late Fee                 | 160.00          |
| Filing Fee                             | 100.00          |
| Security Deposit Retained by Landlords | -362.50         |
| <b>Total Monetary Order</b>            | <b>\$163.00</b> |

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's entire application is dismissed.

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: May 17, 2017

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Residential Tenancy Branch