



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      FF, MNR, MND, MNSD & MNDC

### **Introduction**

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$3950.15 for unpaid rent and damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenant by mailing, by registered mail to where the Tenant resides on December 23, 2017. With respect to each of the applicant's claims I find as follows:

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

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

### **Background and Evidence**

The tenant entered into a written tenancy agreement with the previous owner of the rental property commencing April 1, 2015. On October 1, 2016 the tenant and the previous owner entered into a fixed term written tenancy agreement that provided that

the tenancy would commence on October 1, 2016 and end on March 31, 2017. The rent was \$1054 per month payable in advance on the first day of each month. The security deposit of \$512.50 and the pet damage deposit of \$512.50 from the previous tenancy agreement were transferred to this tenancy agreement.

The applicant purchased the property and took possession on November 30, 2017.

On November 10, 2016 the Tenant gave the previous landlord written notice that she was vacating the rental unit on December 31, 2017 because of the disturbances from a neighboring rental unit.

The tenant vacated at the end of November.

The tenant testified a new tenant moved into the rental unit around the middle of December although she did not have the exact date. The landlord testified this was not correct. The new tenant did not move in until January 15, 2017.

#### Landlord's Application - Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

#### Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. Where a tenant enters into a fixed term tenancy agreement the tenant is obliged to pay the rent to the end of the fixed term subject to the landlord's obligation to mitigate and unless the landlord has breached a material term and the has failed to rectify the situation within a reasonable time after receiving written notice to do so. I determined the tenant failed to prove the landlord breach a material term of the tenancy agreement. Further, I accept the evidence of the landlord they acted reasonably to lessen their loss and that the new tenant did not move in until the middle of January 2017. The tenant failed to provide sufficient evidence to prove

that the new tenant moved into the rental unit in December. As a result I determined the landlord is entitled to \$1054 for the loss of rent for December 2016.

- b. I determined the landlord is entitled to \$495 pursuant to the liquidated damage clause. The tenant agreed to this claim.
- c. The landlord claimed the sum of \$2489.45 for damages pursuant to a Quotation dated December 1, 2016. The tenant disputed much of this claim. The contractor who completed the work did not attend the hearing and did not give evidence in the form of an affidavit or written statement. The landlord took possession of the rental unit on November 30, 2017 and could not give first hand evidence of the condition of the rental unit with the Tenant took possession. The building manager does not work for this landlord. I determined the landlord failed to prove the tenant was responsible for the amount claimed. However, I determined the landlord is entitled to the following:
  - The landlord claimed \$755 for the cost of painting wall and repairing damage to the stairwell. The tenant acknowledged responsibility for the damage to the stairwell but submitted the amount claimed is excessive. She submitted \$200 is a fair amount. After reviewing all of the evidence including the photographs I determined the landlord is entitled to \$300 of this claim.
  - I dismissed the landlord's claim of \$1250 for the cost of installing lino in the kitchen and dining area. The landlord failed to prove the condition of the rental unit prior to the tenant taking possession and that the damage was more than reasonable wear and tear.
  - I determined the landlord is entitled to \$115 for the cost of replacing blinds. The tenant accepted responsibility for this claim.
  - The landlord claimed \$250 for the cost of cleaning. The tenant admitted she failed to clean the oven but disputed the other claims. I determined the landlord is entitled to \$100 of this claim.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$2064 plus the \$100 filing fee for a total of \$2164.

#### Security Deposit/Pet Damage Deposit

I determined the security deposit and pet damage deposit totals the sum of \$1025. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain the security deposit and pet damage deposit thus reducing the amount outstanding under this monetary order to the sum of \$359.

Conclusion

In summary I determined the landlord has established a monetary order against the tenant(s) in the sum of \$2164. I ordered the landlord may retain the security deposit/pet deposit in the sum of \$1025. In addition I ordered that the Tenant pay to the Landlord the sum of \$1139.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on the parties.**

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: June 20, 2017

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Residential Tenancy Branch