



# 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 landlords' application pursuant to the *Residential Tenancy Act* ("the Act") for:

- a monetary order for unpaid rent and/or utilities pursuant to section 67;
- a monetary order for damage to the unit, site, or property, money owed or compensation for 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.

While the landlords' agent, AS ('landlords'), attended the hearing by way of conference call, the tenants did not. The landlords' agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlords' agent testified that the tenant JL was served with the landlords' application for dispute resolution hearing package on February 24, 2017 by way of registered mail to the forwarding address provided by the tenants on February 2, 2017. The landlords provided a Canada Post tracking number. In accordance with sections 89 and 90 of the Act, I find that JL was deemed served with the landlords' application on March 1, 2017, five days after its registered mailing. The landlords' agent testified that the tenant AS was personally served by a process server on February 24, 2017 at the same address where JL was served by registered mail. The process server's affidavit, dated and signed on February 27, 2017 was included in the landlords' evidence. In accordance with section 89 of the Act, I find AS duly served with the landlords' Application. The landlords' agent testified that all parties were served with the landlords' evidentiary materials. In accordance with sections 88 and 90 of the Act, I find the tenants duly served with the landlords' evidence.

**Issue(s) to be Decided**

Are the landlords entitled to a Monetary Order for Unpaid Rent and/or 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 the tenants' security deposit in partial satisfaction of the monetary order requested?

Are the landlords entitled to recover the filing fee for this application?

**Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the landlords' agent, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on July 1, 2016 with monthly rent set at \$1,995.00. The landlords collected, and still hold, a security deposit the amount of \$950.00. The tenants moved out on February 2, 2017 before the scheduled end of this tenancy, June 30, 2017. They did so after having being served with an Order of Possession issued on January 26, 2017 by an Adjudicator appointed under the *Act* and after a Direct Request Proceeding on the same date.

The landlords are seeking monetary compensation as the tenants did not move out within two days of being served the Order of Possession. The landlords are seeking compensation as well for the damage caused by the tenants, as well as the monetary loss they had suffered due to the tenants' failure to abide by the *Act*.

The landlords submitted the following list of items for their monetary claim:

<b>Item</b>	<b>Amount</b>
Garbage Removal	\$450.45
Replacement of Fixture 1	90.74
Replacement of Fixture 2	63.00
Rekeying (Canada Post)	29.00
Professional Cleaning	240.00
Cleaning Supplies	79.00
Grass Repair	21.00
Wall Repair (Quote)	4,200.00

Compensation for February Rent due to Overholding and Damage to Suite	1,995.00
Closet & Floor	379.05
Recovery of Filing Fee	100.00
Security Deposit	-\$950.00
<b>Total Monetary Order Requested</b>	<b>\$6,697.24</b>

The landlords testified that the tenants were offered an opportunity to attend a move out conditions inspection, but the tenants did not respond. The landlords submitted a Notice of Final Opportunity to Schedule a Condition Inspection in their evidence, as well as copies of text message communication between them and the tenants. The landlords testified that the tenants failed to respond. The landlords testified that a condition inspection was completed at the beginning of the tenancy, but no copy of this report was submitted by the landlords. During the hearing I advised that I would allow the landlords additional time, until 4:00 p.m., on May 12, 2017, to submit a copy of the report. A copy of this report has not been received.

The landlords' agent testified that they had paid \$450.45 for professional garbage removal, \$29.00 to rekey the mail box, and \$240.00 for professional cleaning. The landlords' agent also testified that the lawn was damaged due to the unauthorized parking of the tenants' car on top of the grass.

The landlords submitted photos depicting the damage to the walls, floors, and grass, as well as of the significant amount of garbage left behind by the tenants. The landlords submitted receipts and invoices to support their monetary claim above, as well as the painting estimate of \$4,200.00 for the repair and painting of the walls and ceilings of the rental suite.

The landlords testified that they were not able to rent out the rental suite until April 2017 because of the tenants' failure to move out within two days of being served the Order of Possession, and the time it took to for repairs to be done. The landlords submitted a claim equivalent to one month's rent for this monetary loss.

### **Analysis**

The landlords provided undisputed evidence at this hearing, as the tenants did not attend. Section 38(1) of the *Act* requires that landlords, within 15 days of the end of the tenancy or the date on which the landlords receive the tenants' forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlords to retain the deposit. In this case, I find that the

landlords did comply with the *Act* by filing for Dispute Resolution within 15 days of February 2, 2017.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates 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. I accept the landlords' undisputed testimony that the tenants were given the opportunity to attend the move-out inspection, but did not respond to the landlords. I also accept the landlords' testimony that the tenants failed to vacate the premises as required by the Order of Possession served upon them.

The landlords provided, in evidence, labeled photos depicting the damage to the suite. These photos are accompanied by receipts and invoices to support the landlords' claims with the exception of the \$4,200.00 quote for wall repair and painting. Accordingly I find the landlord is entitled to compensation for the damages and professional cleaning, excluding the wall repair and painting, in the amount of \$1,352.24.

The landlords provided undisputed testimony that the walls were damaged by tenants. Although the landlords did provide photos depicting damage to the walls, and a quote in the amount of \$4,200.00, the landlords did not provide any invoices or receipts for the repairs that were completed. The landlords also did not submit a move-in inspection report that was completed at the beginning of this tenancy. In the absence of these things I am unable to determine the extent and cost of the damage that was caused by the tenants during this tenancy. I therefore dismiss this portion of the landlords' monetary claim.

The landlords had also made a monetary claim equivalent to one month's rent for loss of rental income. There is undisputed sworn testimony that the tenants failed to vacate the rental unit until February 2, 2017. The landlords testified that as a result of the damage to the suite, and the overholding by the tenants, the landlords were not able to re-rent the unit until April 2017. The landlords, however, only made a monetary claim for one month of lost rent, which is supported by the invoices submitted in evidence. The landlords submitted an invoice for professional cleaning for services rendered on

February 16, 2017. The garbage removal was completed on February 2, 2017, and repairs to the closet and floor were completed on February 9, 2017. I find that the landlords have sufficiently supported the fact that they were unable to rent the unit for the month of February 2017 due to the tenant's failure to properly vacate this rental unit. I, therefore, allow the landlord's claim for a monetary order for rental differential loss in the sum of one month of lost rental income due to the overholding, and damage and garbage left by the tenants.

The landlords continue to hold the tenants' security deposit of \$950.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit of \$950.00 in partial satisfaction of the monetary claim.

I find that the landlords' Application has merit and that the landlords are entitled to recover the fee for filing this Application

### **Conclusion**

I issue a Monetary Order in the landlords' favour under the following terms, which allows the landlords to be compensated for some of the losses incurred as part of this tenancy, while retaining the tenants' security deposit in partial satisfaction of their monetary claim. The landlords are also entitled to recover the cost of the filing fee for this application.

<b>Item</b>	<b>Amount</b>
Garbage Removal	\$450.45
Replacement of Fixture 1	90.74
Replacement of Fixture 2	63.00
Rekeying (Canada Post)	29.00
Professional Cleaning	240.00
Cleaning Supplies	79.00
Grass Repair	21.00
Compensation for February Rent due to Overholding and Damage to Suite	1,995.00
Closet & Floor	379.05
Recovery of Filing Fee	100.00
Less Security Deposit	-\$950.00
<b>Total Monetary Order</b>	<b>\$2,497.24</b>

The landlords are provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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 landlords' monetary claim for the wall repair and painting 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: June 9, 2017

---

Residential Tenancy Branch