



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

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

- a monetary order for compensation for unpaid rent, 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 tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 20 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the landlord's application for dispute resolution dated February 10, 2017 was served on the tenant at his address, by registered mail on February 18, 2017. The landlord provided a Canada Post tracking number as evidence of service. I find that the tenant was deemed served with the landlord's application for dispute resolution and evidence package in accordance with sections 88, 89 and 90 of the *Act* on February 23, 2017, five days after mailing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for damages and loss as claimed? ? Is the landlord entitled to retain all or a portion of the security deposit for this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This tenancy began in September, 2016. The monthly rent was \$2,300.00. No written tenancy agreement was signed by the parties but the parties agreed that the monthly rent would be reduced to \$2,000.00 for the period of September, 2016 to February, 2017. A security deposit of \$1,100.00 was paid by the tenant at the start of the tenancy and is still held by the landlord. The landlord requested the tenant pay a pet damage deposit of \$500.00 but it was never paid. The tenant is no longer residing in the rental unit, having vacated the premises in February, 2017.

The landlord testified that the tenant only paid \$500.00 for rent in February, 2017 and therefore the rent is in arrears by \$1,500.00. The landlord said that she wishes to charge a daily late fee of \$25.00 for the nine days prior to her filing the application for dispute resolution for a total of \$225.00.

The landlord testified that the tenant caused damage to the rental unit and she estimates that the cost of the repairs, cleaning and landscaping to be about \$1,000.00 in excess of the \$1,100.00 security deposit. The landlord said that she has taken photographs of the rental unit condition but did not submit those into written evidence prior to the hearing.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$2,000.00. I accept the landlord's undisputed evidence that the tenant failed to pay the full rent for February, 2017 and the amount owing is \$1,500.00.

Pursuant to the Residential Tenancy Regulations 7(1)(d) a landlord may charge a late fee of no more than \$25.00. A landlord is not permitted to charge a daily late fee. Consequently, I allow a \$25.00 fee for the late payment of rent.

As this tenancy has ended the landlord is not entitled to collect a pet damage deposit for this tenancy.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. 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 on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find the landlord has provided insufficient evidence of the monetary loss and damage arising as a result of the tenant's actions. The landlord provided vague testimony about work she believed was performed but did not submit any receipts, invoices or estimates in support of her claim for \$1,000.00 of damages. As I find that the landlord has provided insufficient evidence to show, on a balance of probabilities, that there has been damage and loss arising from the tenant's actions or negligence, I dismiss this portion of the landlord's claim with leave to reapply.

As the landlord's application was partially successful, I find that the landlord is entitled to recovery of a portion of the filing fee for this application, in the amount of \$50.00.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$1,100.00 in partial satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$475.00 under the following terms, which allows the landlord to recover the unpaid rent, the late fee and a portion of the filing fee for their application:

Item	Amount
Unpaid Rent February, 2017	\$1,500.00
Late Fee	\$25.00
Partial Filing Fee	\$50.00
Less Security Deposit	-\$1,100.00
<b>Total</b>	<b>\$475.00</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.

I dismiss the landlord's claim for damage and loss with leave to reapply.

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 29, 2017

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Residential Tenancy Branch