



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IMPERIAL APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR MNSD MNDC FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (the "Application") seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for unpaid rent or utilities, to retain the tenant's security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

An agent for the landlord (the "agent"), a witness for the tenant who did not testify, the tenant and the tenant's legal counsel (the "counsel") attended the teleconference hearing. The parties were affirmed and an opportunity to ask questions about the hearing process was provided to the parties. A summary of the testimony and documentary evidence presented is provided below and includes only that which is relevant to the matters before me.

Neither party raised any concerns regarding the service of documentary evidence.

### Preliminary and Procedural Matter

At the outset of the hearing, the tenant was advised that the monetary amount listed in his evidence would not be accepted as the tenant is unable to make their own application through the landlord's application. The tenant and the tenant's counsel confirmed that they understood that the tenant was not permitted under the Rules of Procedure to initiate an application through the landlord's application.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

The parties agreed that a written tenancy agreement existed between the parties although it was not submitted in evidence. The parties agreed that a month to month tenancy began on November 15, 2015 and ended on April 29, 2017 when the tenant vacated the rental unit. Monthly rent was originally \$660.00 per month and had increased to \$685.00 per month as of April 1, 2017 and was due on the first day of each month. The tenant paid a security deposit of \$330.00 which the landlord continues to hold and has accrued no interest to date.

The landlord's monetary claim of \$855.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid rent for April 1-28, 2017 prorated	\$639.00
2. Late fee	\$50.00
3. Junk removal	\$100.00
4. Dump fee	\$56.00
5. Cleaning apartment	\$100.00
6. Carpet cleaning	\$120.00
7. Keys not returned (apartment, mailbox and lobby keys)	\$120.00
<b>Subtotal</b>	<b>\$1,185.00</b>
<i>Less \$330.00 security deposit</i>	<i>-( \$330.00)</i>
<b>TOTAL</b>	<b>\$855.00</b>

Regarding item 1, the tenant confirmed that April 2017 rent was not paid and as a result, I find the tenant breached section 26 of the *Act* which will be discussed later in this decision.

Regarding item 2, the landlord has claimed \$50.00 for a late fee and neglected to provide a copy of the tenancy agreement. This item was dismissed during the hearing for two reasons. First, the amount of \$50.00 is double what the *Regulation* provides for as the maximum late fee is \$25.00. Second, the landlord neglected to provide the tenancy agreement in evidence to support that a late fee was agreed to in writing as part of the tenancy agreement. As a result, this item was dismissed without leave to reapply due to insufficient evidence.

Regarding item 3, the landlord has claimed \$100.00 for junk removal. The landlord did not provide a condition inspection report or photos in support of the need for junk removal. The tenant did not agree that junk removal was necessary.

Regarding item 4, the landlord has claimed \$56.00 for a dump fee. The landlord did not provide a condition inspection report or photos in support of the dump fee claim. The tenant did not agree with this portion of the landlord's claim.

Regarding item 5, the landlord has claimed \$100.00 for cleaning costs. The landlord confirmed that no photos of the rental unit were provided to support that cleaning was required. The tenant testified that the rental unit was cleaned before they vacated.

Regarding items 6 and 7, the landlord has claimed \$120.00 for carpet cleaning and \$120.00 for keys not being returned to the landlord by the tenant. The tenant referred to a video that supports that an agent for the landlord, a caretaker, removed the rental unit door. I dismissed both of these items as the landlord is not permitted to remove the rental unit door and had no right under the *Act* to do so. As a result, I find the landlords breached section 32(1) of the *Act* by removing the rental unit door without any authority under the *Act* to do so. At no time does the landlord have the ability to forcibly evict a tenant by removing the front door. I find the landlord has provided insufficient evidence for items 6 and 7 and I will caution the landlord below for actions of the landlord's agent in the matter before me.

### Analysis

Based on the testimony of the parties provided during the hearing, the documentary evidence and on the balance of probabilities, I find the following.

**Item 1** - As the tenant confirmed that April 2017 rent was not paid I find the tenant breached section 26 of the *Act* which requires that rent be paid when it was due and in the matter before me, rent was due on the first day of each month. Therefore, I find the landlord has met the burden of proof to support that the tenant owes **\$639.00** in unpaid

rent as claimed. I do not grant a higher amount as the landlord did not claim the full rent of \$685.00 for April 2017.

**Item 2-** The landlord has claimed \$50.00 for a late fee and neglected to provide a copy of the tenancy agreement. As mentioned above, this item was dismissed during the hearing for two reasons. First, the amount of \$50.00 is double what the *Regulation* provides for as the maximum late fee is \$25.00. Second, the landlord neglected to provide the tenancy agreement in evidence to support that a late fee was agreed to in writing as part of the tenancy agreement. As a result, this item was dismissed without leave to reapply due to insufficient evidence. **I caution** the landlord not to exceed the amount for late fees which is \$25.00 pursuant to section 7(1)(d) of the *Regulation*.

**Item 3 -** The landlord has claimed \$100.00 for junk removal. I find the landlord has failed to meet the burden of proof as the landlord did not provide a condition inspection report or photos in support of the need for junk removal. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

**Item 4 -** The landlord has claimed \$56.00 for a dump fee. I find the landlord has failed to meet the burden of proof as the landlord did not provide a condition inspection report or photos in support of the need for a dump fee. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

**Item 5 –** As the landlord has claimed \$100.00 for cleaning costs but failed to provide any photos of the rental unit to support that cleaning was required or a condition inspection report, I find the landlord has failed to meet the burden of proof for this portion of their claim. In addition, the tenant testified that the rental unit was cleaned before they vacated. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

**Items 6 and 7 –** After reviewing the video submitted by the tenant which I find supports that the landlord's caretaker clearly removed the rental unit door without any authority to do so under the *Act*, I dismiss both items due to insufficient evidence submitted by the landlord. Furthermore, **I caution** that removing a rental unit door is not permitted under the *Act* in an attempt to evict a tenant and to ensure that the landlord or an agent for the landlord does not repeat that behaviour in the future. **I ORDER** the landlord or any agent for the landlord to never remove a rental unit door without either the prior written permission of the tenant or an order from arbitrator. Failure to comply with my order may result in an administrative penalty under section 94.1 of the *Act* which carries a maximum penalty of \$5,000.00 per day.

I do not grant the landlord the recovery of the cost of the filing fee under section 72 of the *Act*.

As the landlord has claimed against the tenant's security deposit of \$330.00 which has accrued no interest to date and pursuant to section 72 of the *Act*, I authorize the landlord to retain the tenant's full security deposit of \$330.00 in partial satisfaction of the landlord's total monetary claim of \$639.00 for item 1. I grant the landlord a monetary order under section 67 for the balance owing by tenant to the landlord in the amount of **\$309.00**.

### Conclusion

The landlord's application is partially successful. The landlord is reminded of my caution and order above.

The landlord has established a total monetary claim in the amount of \$639.00 for item 1. The remainder of the landlord's claim is dismissed without leave to reapply. The landlord has been authorized to retain the tenant's full security deposit of \$330.00 which has accrued no interest in partial satisfaction of the landlord's total monetary claim of \$639.00. The landlord is granted a monetary order under section 67 for the balance owing by tenant to the landlord in the amount of \$309.00. The landlord must serve the tenant with the monetary order which may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: July 4, 2017

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Residential Tenancy Branch