



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MND MNDC MNSD FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for unpaid rent, damage to the unit or other financial loss 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions: the tenant attended with an assistant and the landlord's representative attended. The tenant present at this hearing (Tenant SB) confirmed receipt of the landlord's Application for Dispute Resolution. The landlord provided documentary evidence in the form of the registered mail receipts and tracking information to prove that the tenant who chose not to attend this hearing (Tenant DP) was served with the landlord's ADR on January 19, 2017 (when the package was signed for based on the Canada Post tracking information). I find Tenant DP was sufficiently served in accordance with section 89 and 90 of the Act and I accept that Tenant SB was sufficiently served with the landlord's ADR.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, damage to the unit or other loss? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

This tenancy began on June 1, 2014 with a six month fixed term. The tenancy has continued as a month to month tenancy with a rental amount of \$825.00 payable on the first of each month. The tenant vacated the rental unit on December 28, 2016 at which time she provided her forwarding address. The landlord continues to hold the tenant's \$412.50 security deposit paid prior to the outset of the tenancy (May 6, 2014) and she has applied to retain the deposit towards a monetary award for unpaid rent and damage to the unit.

The undisputed evidence of the landlord was that the tenant gave notice to end the tenancy on December 19, 2016. The tenant argued that she could not provide notice earlier because she did not have the landlord's mailing address and she could not reach the landlord by phone. She explained that her co-tenant would not let her in the unit so she could not access the residential tenancy agreement to get the landlord's contact information. She testified that she left several messages for the landlord but her call was not returned. The landlord testified that did not receive messages from the tenant prior to December 19, 2016.

The condition inspection report was not submitted for this hearing however both parties agreed that a condition inspection and report were completed at the end of the tenancy. The tenant testified that, while she was present for the condition inspection, she does not remember signing the document or agreeing to any deductions from her security deposit. Her assistant stated that the tenant has significant anxiety issues and is unable to handle situations where there is pressure. The landlord testified that the tenant was present, reviewed the report and agreed to have the landlord retain her security deposit.

The landlord testified that, as a result of the short notice the tenant provided, the landlord was unable to re-rent the unit for January 2017. The landlord testified that the unit was re-rented for February 1, 2017. She argued that the tenant should be responsible for the landlord's rental loss for January 2017 in the amount of \$825.00. The landlord testified that, after receiving notice from the tenant in December 2016 and throughout January 2017, she attempted to re-rent the unit by advertising the rental on their own rental site as well as other online sites, the newspaper and their social media page. The landlord submitted a copy of one of the online advertisements for the rental unit.

The landlord also testified that the tenant is required to pay \$231.00 for cleaning of the carpets at the end of tenancy. The landlord testified that the tenant did not clean the carpets prior to move out. The landlord provided an invoice in the amount of \$231.00 dated December 28, 2016 that read, "deodorizer used heavy cigarette smoke ... no empty discount not vacuum, heavily soiled". The tenant testified, though provided no documentary evidence, that she rented a carpet cleaner and used it prior to vacating the rental unit. The landlord testified that the rental unit had to be cleaned extensively after the tenants vacated the rental unit. The tenant testified that she cleaned extensively herself. The landlord submitted an invoice for \$180.00 in unit cleaning on December 30, 2016.

The landlord sought a total amount of \$1236.00 as well as recovery of the \$100.00 filing fee.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. In this case, the landlord must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. In the case of both the carpet cleaning and unit cleaning, the landlord has submitted invoices after the end of the tenancy to prove the amount of her monetary loss to repair damage to the unit.

I accept the landlord's evidence that the rental unit and the carpet in the rental unit required cleaning. The tenant did not submit any evidence that would prove she hired a carpet cleaning company as required by her tenancy agreement. I accept the notations on the carpet cleaning invoice that indicate additional cleaning was required in order to get the smell of smoke out of the carpets. Given the evidence provided by the landlord and the lack of evidence by the tenant in response, I find the landlord is entitled to a portion of her **carpet cleaning costs to an amount of \$231.00.**

I accept the landlord's testimony that the unit required extensive cleaning after the tenants vacated the rental unit despite the tenant's attempts to clean. The invoice notes from the carpet cleaner and cleaning person for the unit assist in supporting the landlord's testimony. Based on consideration of all of the evidence and given that the

landlord provided an invoice to reflect the cost of cleaning as well as the notation discussed by both parties within the residential tenancy agreement regarding cleaning, **I find that the landlord is entitled to \$180.00 for the cost of cleaning.**

Residential Tenancy Policy Guideline No. 3 provides that the intention of ordering recovery of rental loss to the landlord is that the damages are sufficient (in amount) to put the landlord in the same position as if the tenant had not breached the tenancy agreement (in this case, by providing insufficient notice to the landlord). When a tenancy is month to month, the tenant is required to provide 1 month notice on or prior to the day that the rent is due.

As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy...

The landlord testified that she was able to re-rent the unit for February 1, 2017. She argued that she did not have time to rent the unit for a portion of December 2016, particularly as the tenant vacated the unit more than halfway through the month of December. When seeking damages, a landlord has a duty to mitigate the loss by re-renting the premises as soon as possible and for an appropriate rental amount. In this case, the landlord sought the same rental amount as the rental amount paid by the tenant. The tenant provided proof that she attempted to re-rent the unit through a variety of methods but was unsuccessful in finding a tenant for January 2017. Therefore, **I find that the landlord is entitled to recover the January 2017 rental loss in the amount of \$825.00.**

Pursuant to section 72(2), the landlord is entitled to retain the tenant's \$412.50 security deposit towards the monetary award granted to the landlord.

As the landlord has been successful in her application, I find that the landlord is entitled to recover the **\$100.00 filing fee** for this application from the landlord.

### Conclusion

I grant a monetary order to the landlord as follows,

Item	Amount
Rental Loss	\$825.00
Cleaning of Unit	180.00
Carpet cleaning of Unit	231.00

Less Security Deposit	-412.50
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$923.50</b>

The landlord is provided with this Order in the above terms and the tenant(s) must be served with 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.

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: July 05, 2017

---

Residential Tenancy Branch