



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING ADVISORY ASSOCIATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            MND MNR MNSD FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (the "Application") under the *Residential Tenancy Act* (the "*Act*") for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, to keep all or part of the tenant's security deposit, and to recover the cost of the filing fee.

The landlord and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

The tenant confirmed that they received the landlord's evidence prior to the hearing and that they had the opportunity to review the landlord's evidence. The tenant confirmed that the tenant did not submit evidence in response to the landlord's application. I find the tenant was sufficiently served in accordance with the *Act*.

### Preliminary and Procedural Matter

At the outset of the hearing, the landlord stated that the original monetary claim amount of \$1,385.00 was based on estimated costs and that the landlord submitted a monetary order worksheet in evidence that lists a total amount of \$1,712.92. The landlord did not formally amend their Application in accordance with the Rules of Procedure and as a result, was advised that if the agent wished to proceed, the landlord would be limited to original amount claimed of \$1,385.00. The agent confirmed that he wished to proceed and as a result, the maximum amount of the landlord's monetary claim before the filing fee being added to that amount will be \$1,385.00.

### 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

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on April 1, 2008. The tenant claims the tenant vacated the rental unit on December 31, 2016 while the agent testified that the rental unit was not vacant and keys returned until January 12, 2017.

Monthly rent in the amount of \$820.00 was due on the first day of the month and was increased during the tenancy to the most recent monthly rent of \$985.00 per month. A security deposit of \$410.00 was paid by the tenant at the start of the tenancy, which the landlord continues to hold and has accrued \$4.62 in interest for a total security deposit including interest in the amount of \$414.62.

The landlord's monetary claim includes the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Mattress removal	\$141.75
2. Repair countertop	\$267.50
3. Clean suite	\$155.00
4. Re-key unit	\$163.67
5. Loss of January 2017 rent	\$985.00
<b>TOTAL</b>	<b>\$1,385.00*</b> (*as described above, while amount actually totals \$1,712.92 the landlord is limited to the original amount of \$1,385.00 claim as no amendment was filed by the landlord)

Regarding item 1, the landlord has claimed \$141.75 for the cost to remove the tenant's mattress which the tenant confirmed that she left in the rental unit. The tenant claims she was unable to remove her mattress as the only way to get the mattress into the unit was to remove a window first. The tenant testified that she did not request to have the same window removed at the end of the tenancy so that she could remove her mattress. The landlord submitted a receipt for \$141.75 in support of this portion of the claim.

Regarding item 2, the landlord has claimed \$267.50 for the cost to repair the countertop that was burned by the tenant. The tenant testified that she did burn the countertops during the hearing. The agent referred to an invoice in the amount of \$267.50 in support of this portion of the landlord's monetary claim.

Regarding item 3, the landlord has claimed \$155.00 for suite cleaning. The agent referred to a cleaning receipt in the amount of \$155.00 in support of this portion of their monetary claim.

The agent then described item 5 which related to loss of January 2017 rent in the amount of \$985.00. The agent testified that the landlord was not served with the tenant's notice to end the tenancy until December 5, 2016 which the tenant made effective December 31, 2016. The agent testified that the landlord suffered a loss of January 2017 rent due to the late notice provided by the tenant as the earliest the tenant could have ended the tenancy without a loss of rent was January 31, 2017.

The parties were advised that item 4 details were not required based on the landlord providing sufficient evidence for items 1, 2, 3, and 5 that met the maximum claim of \$1,385.00.

### Analysis

Based on details of the application and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Item 1** – This portion of the landlord's claim was for \$141.75 for the cost to remove the tenant's mattress which the tenant confirmed that she left in the rental unit. I find the tenant is liable for this amount as the tenant admitted during the hearing that she did not request to have the landlord remove the same window that the landlord had removed to allow the tenant to move the mattress into the rental unit. As a result, I find the landlord has met the burden of proof and I award the landlord **\$141.75** as claimed.

**Item 2** - The landlord has claimed \$267.50 for the cost to repair the countertop that was burned by the tenant. As the tenant testified that she did burn the countertops during the hearing and having reviewed the invoice in the amount of \$267.50, I find the landlord has met the burden of proof and that the tenant damaged the countertop beyond reasonable wear and tear which is a breach of section 37 of the *Act*. Section 37(2) of the *Act* states:

### **Leaving the rental unit at the end of a tenancy**

#### **37 (2) When a tenant vacates a rental unit, the tenant must**

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.**

[My emphasis added]

Therefore, I grant the landlord **\$267.50** as claimed for this portion of the landlord's monetary claim.

**Item 3** - The landlord has claimed \$155.00 for suite cleaning and I find that the landlord is entitled to cleaning costs as the tenant provided insufficient evidence to support that the rental unit was reasonably cleaned at the end of the tenancy. Therefore, I grant the landlord **\$155.00** for cleaning costs as claimed.

**Item 5** – There is no dispute that the tenant did not provide her one month notice to end tenancy to the landlord until December 5, 2016. As a result, section 45(1) of the *Act* applies and states:

**Tenant's notice**

**45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that**

**(a) is not earlier than one month after the date the landlord receives the notice, and**

**(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**

[My emphasis added]

Given the above, and taking into account that monthly rent was due on the first day of each month, I find the tenant breached section 45(1) of the *Act* as the earliest date in which the tenancy could end without a loss of rent was January 31, 2017. Therefore, I find the landlord has met the burden of proof and is entitled to compensation for the loss of rent for the full month of January 2017 in the amount of **\$985.00**.

Given the above, I do not find it necessary to consider item 4 as items 1, 2, 3 and 5 add up to the maximum amount claimed by the landlord of **\$1,385.00**. As a result, I dismiss item 4 without leave to reapply as I find that consideration of item 4 is moot.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**.

Based on the above, I find the landlord has established a monetary claim in the amount of **\$1,485.00** comprised of \$1,385.00 for items 1, 2, 3 and 5, plus the recovery of the cost of the \$100.00 filing fee. The landlord continues to hold the tenant's security deposit including interest which totals \$414.62.

**I authorize** the landlord to retain the tenant's full security deposit including interest of \$414.62 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order

pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$1,070.38**.

Conclusion

The landlord's application is successful.

The landlord has established a total monetary claim of \$1,485.00 comprised of \$1,385.00 for items 1, 2, 3, and 5 which is the maximum amount of the landlord's claim, plus recovery of the cost of the filing fee in the amount of \$100.00. The landlord has been authorized to retain the tenants' full security deposit including interest which totals \$414.62 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$1,070.38. This order must be served on the tenant and 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 11, 2017

---

Residential Tenancy Branch