



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR OPR MNSD FF

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. The landlord stated that the 10 Day Notice to End Tenancy dated May 19, 2017 to be effective May 29, 2017 and the Application for Dispute Resolution were both served personally and the tenant agreed they were received as stated. The parties agreed the tenant vacated on or about May 29, 2017. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for rental arrears and other compensation;
- b) To retain the security deposit to offset the amount owing;
- c) An Order of Possession pursuant to Sections 45 or 46, and 55; and
- d) An order to recover the filing fee pursuant to Section 72.

### **Issue(s) to be Decided:**

An Order of Possession is no longer required. Is the landlord entitled to a Monetary Order for rental arrears and other compensation and to recover the filing fee?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced January 1, 2017 on a fixed term lease to January 31, 2018, a security deposit of \$887.50 was paid and rent was \$1775 a month. The landlord said the tenant paid only \$600 rent in May 2017 and vacated at the end of May. They were unable to re-rent the unit until July 1, 2017. The landlord claimed \$2669.50 on the Application and specified the amounts owed in the hearing as follows:

- \$1775 : rent for June 2017 due to the breach of the fixed term lease

- \$400: repayment of credit allowed to paint the unit. The tenant agreed he received the credit but did not repaint the unit.
- \$65.37: to repair 4 year old broken door hardware
- \$15.75: for dumping fees
- \$856: to repaint the unit. The paint was 31/2 years old at move-out
- \$7: for NSF fee
- ?: cleaned by landlord; it took 3 days and the landlord and partner had to take time off work.

The tenant proposed a settlement which was unacceptable to the landlord. The tenant attempted to introduce problems they encountered with the tenancy. I advised them they had the right to pursue such matters if they made their own application but I declined to hear their complaints on this, the landlord's application.

In evidence is the Notice to End Tenancy, a tenancy agreement, the move-in and move-out condition inspection reports, invoices and photographs. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

An Order of Possession is not required as the tenants vacated pursuant to the Notice to End Tenancy.

### **Monetary Order**

I find this was a fixed term tenancy which would not have ended until January 31, 2018. I find the tenants breached the agreement by failing to pay rent. I find the landlord mitigated the damage by re-renting for July 1, 2017. I find the tenants are responsible for the rental loss suffered by the landlord in the amount of \$1775 for June 2017. I find the landlord also entitled to recover the rental arrears of \$1175 for May, 2017; the tenant had paid only \$600 of rent for May. Both parties agreed the tenant was given a \$400 credit off the first month's rent to paint the unit but he did not. I find the landlord entitled to recover this \$400 credit.

In respect to the landlord's claim for damages, I find awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that this tenant caused some damage as it is well supported by the move-in and move-out reports in evidence. I find the landlord entitled to recover the \$15.75 dumping fees and \$7 NSF fee.

As explained to the parties in the hearing, Residential Guideline 40 sets out a useful life for elements in rented premises. This is designed to account for reasonable wear and tear. I find paint is assigned a useful life of 4 years (48 months) and this paint was 31/2 (42 months) old at move out. I find the landlord entitled to recover 12.5% of the cost of repainting or \$107 for the useful life remaining in the paint. Although the tenant submitted he repaired the holes in the walls and baseboard, I find the weight of the evidence is that the unit needed repainting. In respect to the \$65.37 claimed for 4 year old door hardware, I find insufficient evidence that the tenants broke the lock. I find it is not noted on the move-out report so I find the landlord not entitled to recover this amount. I find the weight of the evidence is that the unit needed cleaning but the landlord did not submit an invoice for cleaning and for their time. Therefore, I award them the nominal sum of \$100 for cleaning.

**Conclusion:**

I find the landlord is entitled to a monetary order as calculated below and to recover filing fees paid for this application. However, as the landlord claimed only \$2669.50 on the Application, I find she is limited to this amount of recovery. She agreed to waive the amount that exceeded her claim. I find the landlord entitled to retain the security deposit to offset the amount owing.

## Calculation of Monetary Award:

|  |                |
|--|----------------|
| Rental Arrears May 2017  | 1175.00        |
| Rental loss June 2017  | 1775.00        |
| Recovery of credit for work not done                                     | 400.00         |
| Garbage dump fees  | 15.75          |
| Allowance for paint  | 107.00         |
| Allowance for landlord time to clean                                     | 100.00         |
| Filing fee   | 100.00         |
| Less security deposit  | -887.50        |
| <b>Total Monetary Order</b>  | <b>2785.25</b> |
| <b>Total Monetary Order to landlord based on the amount on her claim</b> | <b>2669.50</b> |

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 18, 2017

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Residential Tenancy Branch