



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUTTON WEST COAST REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF, RR, MNDC

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a monetary order for unpaid rent and compensation for 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 and pet damage 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 applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order allowing the tenant to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65.

The tenant did not attend this hearing which lasted approximately 10 minutes. The landlord was represented by its agent, JM (the "landlord") who appeared and was given 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 April 12, 2017 and evidence package were served personally on the tenant by an agent of the landlord on April 28, 2017. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was served with the landlord's application and evidentiary materials on April 28, 2017.

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 tenant entitled to a monetary award as claimed? 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 periodic tenancy began in September, 2016. A security deposit of \$475.00 was collected at the start of the tenancy and is still held by the landlord. The rent at the end of the tenancy was \$950.00.

The tenant vacated the rental unit on or about April 5, 2017. The tenant did not provide the landlord with a means of communication and the tenant did not participate in a move-out condition inspection despite the landlord attempting to schedule one. The tenant has not provided the landlord with a forwarding address in writing as of the date of the hearing.

The landlord claims the amount of \$3,025.00 for the following items:

Item	Amount
Rental Arrears – Feb, March, 2017	\$1,250.00
Lost Rental Income – April, 2017	\$950.00
Repairs and Maintenance	\$825.00
<b>TOTAL</b>	<b>\$3,025.00</b>

The landlord said that the tenant failed to pay the full rent for the months of February, and March, 2017. The landlord said that the tenancy is in arrears by \$1,250.00. The landlord said that because the tenant did not vacate the rental unit until April 5, 2017 they were unable to find a new tenant until May, 2017. Therefore, the landlord claims the amount of \$950.00 for lost rental income in April, 2017.

The landlord said that the tenant left the rental unit in a state of disrepair and costs were incurred to clean and repair the unit. The landlord submitted into written evidence several invoices for services including cleaning, carpet cleaning, general repairs, and rubbish removal. The landlord also submitted into written evidence photographs of the

rental unit showing the state it was left by the tenant. The landlord claims the amount of \$825.00 for the repairs and cleaning of the rental unit.

### Analysis

The tenant did not attend the hearing which was scheduled by conference call at 1:30pm. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently I dismiss the tenant's application without leave to reapply.

The landlord claims the amount of \$3,025.00 for loss and damages arising from 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 accept the landlord's evidence that the tenant failed to pay the full rent for the months of February and March, 2017 and the arrears for this tenancy is \$1,250.00. I therefore, issue a monetary order in the amount of \$1,250.00 for the rental arrears as of August 28, 2017, the date of the hearing.

I accept the landlord's evidence that the tenant did not vacate the rental unit until sometime in the month of April. I accept the landlord's evidence that because of the tenant's continued occupation they were unable to get a new tenant to occupy the rental unit for the month of April, 2017. Accordingly, I find that the landlord is entitled to a monetary award in the amount of \$950.00 for the lost rental income for April, 2017.

I find that the landlord has shown on a balance of probabilities that there was damage to the rental unit which necessitated the landlord cleaning and performing repairs. I accept the landlord's evidence that the total cost of the cleaning and replacement materials as well as the labour is \$825.00. I issue a monetary award in that amount.

As the landlord's claim was substantially successful, the landlord is entitled to recover the \$100.00 filing fee for this application.

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 \$475.00 in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The tenant's application is dismissed.

I issue a monetary order in the landlord's favour in the amount of \$2,650.00 under the following terms:

Item	Amount
Rental Arrears – Feb, March, 2017	\$1,250.00
Lost Rental Income – April, 2017	\$950.00
Repairs and Maintenance	\$825.00
Filing Fee	\$100.00
Less Security Deposit	-\$475.00
<b>TOTAL</b>	<b>\$2,650.00</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: August 28, 2017

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Residential Tenancy Branch