



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent and utilities - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order for the return of the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenants did not attend the hearing. The Landlord states that the Tenants’ address was obtained by a search and the Landlord confirmed the address by driving by the address and noting the presence of the Tenants’ car. I accept the Landlord’s evidence that each Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail in accordance with Section 89 of the Act. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The Landlord resides in a unit adjoining the rental unit. The tenancy started on February 14, 2016 and although the Tenants left the unit in mid-September 2016 they did not return to remove their remaining belongings until October 5, 2016. Rent of \$1,500.00 was payable on the first day of each month and the Tenant was required to

pay for ½ of the utilities, including the internet. At the outset of the tenancy the Landlord collected \$750.00 as a security deposit. The Tenants never provided a forwarding address and did not return the keys to the unit. No move-in or move-out inspections were conducted and no reports were completed.

The Tenants did not pay any rent for October 2016 and the Landlord claims \$1,500.00. The Landlord ended the tenancy for unpaid rent and obtained an order of possession on September 21, 2017. The Landlord states that the order of possession was served on the Tenants by registered mail on September 22, 2016. I note that the order of possession required the Tenants to move out of the unit within 2 days receipt of the order of possession. On October 12, 2016 the Landlord advertised the unit as available for November 1, 2016.

The Tenants failed to pay their share of the internet costs for July, August and September 2016. The Landlord provides bills for each of these months in the amount of \$81.76 and confirms that the Tenants share is \$40.88 for each of these months.

The Tenants failed to pay the hydro costs and the Landlord claims \$212.91 for July and August and \$113.60 for September 2016. The Landlord provides only the September 2016 bill.

The Landlord claims the filing fee for a previous application. The Landlord claims the costs of registered mail to serve the Tenants.

The Tenants left a wood pellet fireplace damaged by leaving the pellet delivery pipe plugged. The Landlord had to unplug the pipe and claims \$250.00 for its repairs. No invoice was provided for the labour. No photos were provided.

The Landlord states that the Tenant failed to leave the unit clean and left garbage, food and household items. The Landlord claims the cost of \$300.00 for cleaning the 1,300

square foot unit. No invoice was provided. The Landlord provided faxed copies of black and white photos of various parts of the unit.

The Landlord states that the Tenants failed to return all the keys and claims \$230.00 for the installation of a new lock. The Landlord provides a faxed copy of a receipt.

### Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. When a tenancy ends no further rent is payable however a tenant will be liable for over holding the unit. Section 7 of the Act provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. As the Landlord ended the tenancy and served the order of possession on September 22, 2016 and noting that the Tenants were required to move out of the unit within 2 days of receipt of that order of possession I find that the Tenants received the order on September 27 and were required to vacate the unit by September 29, 2016. Given the Landlords evidence that the Tenant's moved out on October 5, 2016 I find that the Landlord has substantiated over holding rent for the period October 1 to 5, 2016 inclusive in the amount of **\$241.95** ( $1,500.00/31 = \$48.39$  per day x 5 days). Although the unit was then available for another tenancy as the Landlord did not advertise the unit for an earlier occupation date than November 1, 2016 I find that the Landlord failed to take any reasonable steps to mitigate its losses claimed and is therefore not entitled to lost rental income.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and 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. Section 7 of the Act provides that where a tenant does not comply

with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Based on undisputed evidence of the Tenants' requirement to pay half the hydro and internet costs and given the provision of the hydro bill for September 2016 I find that the Landlord has substantiated an entitlement to **\$113.60**. Given the lack of any additional hydro bills I dismiss all other hydro costs claimed. Give the bills for the internet I find that the Landlord has substantiated the costs of **\$122.64** (\$40.88 x 3).

The Landlord provided no invoice detailing the cleaning work done, the hours taken and the hourly cost. The Landlord provided no move-out condition report detailing the extent of areas left unclean. Given the size of the unit, I consider the costs claimed by the Landlord to be excessive. There is no evidence that the Landlord mitigated the cleaning costs by doing the cleaning themselves. For these reasons I find that the Landlord has not substantiated the amount claimed. However given the photos showing that the Tenants did leave some cleaning and garbage I find that the Landlord is entitled to nominal amount of **\$100.00**.

There are no photos of the damage to the fireplace. Evidence of the problems with the stove does not support a lengthy repair time and there is no invoice setting out the hours or the hourly cost being claimed. There is no evidence that the Landlord mitigated repair costs by doing the labour itself. For these reasons but based on the undisputed evidence that the Tenants did leave the fireplace with damage, I find that the Landlord has only substantiated a nominal amount of **\$50.00**.

Based on the undisputed evidence that the Tenants failed to return the keys to the unit I find that the Landlord has substantiated that this failure caused the Landlord to have new locks installed. Given the receipt for the cost of the locks I find that the Landlord has substantiated the costs claimed of **\$110.00**. Given the lack of an invoice detailing the time taken to repairs the locks, the number of locks that were replaces and the lack

of evidence to support that the Landlord mitigated costs by doing the labour himself, I find that the Landlord has only substantiated a nominal amount of **\$25.00**.

Nothing in the Act provides for the recovery of a filing fee for a previously heard application or for the costs of participating in the proceedings. A party is only entitled to claim the filing fee for the application being heard. I therefore dismiss the claims for the filing fee paid on a previous application and for the service mailing costs.

As the Landlord application has had merit I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$863.19**. Deducting the security deposit plus zero interest of \$750.00 from this entitlement leaves **\$113.19** owed by the Tenants.

#### Conclusion

I Order the Landlord to retain \$863.19 from the security deposit plus interest of \$750.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$113.19**. If necessary, this order may be filed in the Small Claims 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: September 15, 2017

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Residential Tenancy Branch