



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

MNDC MNR MNSD FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages or losses arising out this tenancy pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the landlord's agent, O.C. (the "landlord") attended the hearing. The landlord was given a full opportunity to be heard, to present her testimony and to make submissions.

The landlord said that she served the tenant with her application for dispute resolution along with her evidentiary package by way of Canada Post Registered Mail on August 10, 2017. The Canada Post Registered Mail receipt and tracking number were provided to the hearing by the landlord. Pursuant to sections 88, 89 & 90 of the *Act*, the tenant is deemed served with these documents on August 15, 2017, five days after their posting.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord retain the tenant's security deposit in partial satisfaction for any award granted?

Can the landlord recover the filing fee?

### Background and Evidence

Undisputed testimony provided to the hearing by the landlord explained that this tenancy began on August 15, 2010 and ended on July 31, 2017. Rent was \$1,499.00 per month, and a security deposit of \$650.00 collected at the outset of the tenancy, continues to be held by the landlord.

The landlord is seeking a monetary award of \$562.00 for unpaid parking, along with cleaning that was required in the rental unit following the conclusion of the tenancy and the replacement of a door in the bedroom of the rental unit. The landlord has also applied to retain the tenant's security deposit to offset any monetary award granted.

The landlord explained that the tenant left numerous items in the rental unit following the tenancy, all of which had to be removed to the dump. Additionally, she said that cleaning and garbage removal were identified by the parties as requiring attention in the condition inspection signed by the tenant on July 31, 2017. The landlord provided numerous photos of objects in the unit which required cleaning, and she enclosed receipts for the cleaning work performed with her application for dispute. Following the condition inspection of the unit the tenant provided her forwarding address as being the rental unit in question for this dispute.

### 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. The claimant 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 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. In this case, the onus is on the landlord to prove her entitlement to a monetary award.

The landlord explained that the tenant vacated the rental unit without paying the amount due for parking. In addition, the tenant failed to adequately clean the apartment, broke a door in the bedroom and left numerous items in the unit which the landlord paid to be removed.

Section 37(2) of the *Act* notes, "When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear."

Based on the undisputed oral testimony provided to the hearing by the landlord, and the physical evidence submitted to the hearing as part of the landlord's evidentiary package, I find that the tenant has failed to leave the rental unit in a state which can be considered reasonably clean. I find that the landlord has suffered a loss as a result, and will therefore allow the amount sought for cleaning and junk removal. Based on the oral testimony provided to the hearing by the landlord, I do not find that the door which was broken during the tenancy can be considered to have suffered "reasonable" wear and tear and find that the landlord is entitled to compensation for its replacement.

Section 7 of the *Act* states, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results." Based on the undisputed testimony of the landlord, I find that the tenant has failed

to parking per the terms of her tenancy agreement. I find that the tenant has not complied with the terms of the tenancy agreement and must compensate the landlord for this loss. I award the landlord the entire amount sought for non-payment of parking.

Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in its entirety, in partial satisfaction for the monetary award. As the landlord was successful in her application and pursuant again to section 72 of the *Act*, I allow the landlord to recover the \$100.00 filing fee associated with the application.

### Conclusion

I issue a Monetary Order of \$12.00 in favour of the landlord as follows:

Item	Amount
Cleaning	\$175.00
Garbage Removal	75.00
Bedroom Door Replacement	100.00
Outstanding Parking	212.00
Return of Filing Fee	100.00
Less Security Deposit	(-650.00)
<b>Total =</b>	<b>\$12.00</b>

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: February 9, 2018

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Residential Tenancy Branch