



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, 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 unpaid rent, for damage to the rental unit, and for money owed or 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 in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package via Canada Post Registered Mail on September 8, 2017. The landlord also stated that the 1<sup>st</sup> documentary evidence package was served to the tenant via Canada Post Registered Mail and that a second documentary evidence package was served to the tenant via Canada Post Registered Mail on January 17, 2018 for which the landlord provided the Canada Post Customer Receipt Tracking number as confirmation (noted on the style of cause of this decision).

I accept the undisputed affirmed evidence of the landlord and find that the tenant has been properly served as per sections 88 and 89 of the Act. The tenant is deemed served 5 days later on September 13, 2017 as per section 90 of the Act. I also note that there was no record of the landlord's 1<sup>st</sup> documentary evidence package being submitted to the Residential Tenancy Branch and the landlord was unable to provide

any proof of service. The hearing proceeded in the absence of the landlord's 1<sup>st</sup> documentary evidence.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks a monetary claim of \$3,848.81 which consists of:

\$25.00	Late Rent Fee, July 2017
\$25.00	Late Rent Fee, August 2017
\$25.00	NSF, June 2017
\$25.00	NSF, July 2017
\$25.00	NSF, August 2017
\$573.81	Unpaid Rent, August 2017
\$3,000.00	Bailiff Charge(s)

The landlord claims that the tenants incurred the above noted late rent fee(s), NSF charges and unpaid rent during the tenancy as noted above. During the hearing the landlord clarified that the Bailiff charge of \$3,000.00 was an estimated amount at the time of filing the application, but has submitted the completed invoice documents dated October 5, 2017 for \$1,736.67. The landlord seeks to amend this portion of the monetary claim. The landlord's amended total monetary claim has been lowered to \$2,585.48.

### 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, I accept the undisputed affirmed evidence of the landlord and find that the tenant caused to be incurred the above noted late rent fee(s), NSF charge, unpaid rent for August 2017 and bailiff charges for enforcement of a writ of possession. On this basis, I find that the landlord has provided sufficient evidence of the claims totaling, \$5,585.48.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Although the landlord filed an application to offset this claim against the currently held security deposit, the landlord has failed to disclose the amount of the currently held security deposit. As such, I decline to make this order regarding the security deposit.

### Conclusion

The landlord is granted a monetary claim of \$2,585.48.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the 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: March 23, 2018

---

Residential Tenancy Branch